TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 559

JOHN PATRICK HENRY, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 4, 1958

CERTIORARI GRANTED FEBRUARY 24, 1959

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 12306

UNITED STATES OF AMERICA, Plaintiff-Appellant,

vs.

JOHN PATRICK HENRY and ALBERT RUDOLPH PIEROTTI, Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Appendix to Appellants' Brief

INDEX TO APPENDIX

PAGE

Statement Pursuant to Rule 12(c) of the Rules of the United States Court of Appeals, Seventh Circuit 1

Placita 3

Indictment 4

Motion of Albert R. Pierotti, to suppress evidence, filed June 28, 1957 5

Motion of John Patrick Henry, to suppress evidence, filed September 10, 1957 7

Answer to defendant's motion to suppress evidence, filed September 9, 1957 10

Transcript of proceedings had on October 22, 1957 10-26

George Stadtmiller—
Direct Examination by Mr. Calihan 11
Cross Examination by Mr. Waters 18
Redirect Examination by Mr. Piragine 25

Amendment to motion of Albert R. Pierotti, to suppress evidence, filed November 25, 1957 27

Order, April 18, 1958, leave granted to use copy of amendment to motion to suppress evidence in lieu of original 28

Stipulation, filed April 18, 1958 28

Amendment to motion of John Patrick Henry, to suppress evidence, filed April 18, 1958 29

Transcript of proceedings had on November 25, 1957... 30
Colloquy 30-32

Transcript of proceedings had on January 22, 1958 32-71
Colloquy 32-36, 70-71

PAGE

Judgment and commitment as to John Patrick Henry, entered January 24, 1958 72

Judgment and commitment as to Albert Rudolph Pierotti, entered January 24, 1958 74

Notice of Appeal, filed January 31, 1958 76

Certificate of mailing of notice of appeal 77

Certificate of Clerk, dated April 18, 1958 78

WITNESSES.

For Government:

Wilbur Holtz—
Direct Examination by Mr. Waters 36-37
Cross Examination by Mr. Calihan 39

Wallace Nunes—
Direct Examination by Mr. Waters 39-40
Cross Examination by Mr. Piragine 42
Redirect Examination by Mr. Waters 44
Recross Examination by Mr. Piragine 44

Joseph Teodorczyk—
Direct Examination by Mr. Waters 45
Cross Examination by Mr. Piragine 47

John J. Oitszinger—
Direct Examination by Mr. Waters 51
Cross Examination by Mr. Calihan 57
Cross Examination by Mr. Piragine 64
Redirect Examination by Mr. Waters 68
Recross Examination by Mr. Piragine 69

	Original	Print
Proceedings in the U.S.C.A. for the Seventh Circuit		
Opinion, Hastings, J.	80	80
Dissenting opinion, Parkinson, J	86	87
Judgment	90	90
Order denying petition for rehearing	91	91
Clerk's certificate (omitted in printing)	92	91
Order allowing certiorari	93	91

APPENDIX.

1

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

STATEMENT PURSUANT TO RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(Filed May 21 1957)

On May 21, 1957 the defendants, John Patrick Henry and Albert Rudolph Pierotti, were indicted on one count, charging a violation of 18 U.S.C. 659, in that the defendants did unlawfully possess three (3) cartons of radios, of the value of in excess of $100.00, which said goods had been stolen from an interstate shipment.

On May 23, 1957 the defendants made bail by filing their appearance bonds, and on June 13, 1957 they entered pleas of not guilty to the indictment.

On June 28, 1957 the defendant Pierotti filed a Motion to Suppress Evidence and on September 10, 1957 the defendant Henry filed a like motion.

On October 22, 1957 evidence and arguments were heard and concluded, and an order was entered, denying the motions of the defendants, Pierotti and Henry.

2 On November 25, 1957 the defendant Pierotti filed an amendment to the Motion to Suppress Evidence, and leave was granted the defendant Henry to file a like amendment on November 27, 1957. The Court denied these amended Motions on November 25, 1957.

On January 23, 1958 the case was called for trial before the Honorable Philip L. Sullivan, United States District Judge, and, upon waiver of trial by jury executed by both defendants, evidence was heard.

On January 24, 1958 the Court found both defendants guilty, as charged in the indictment, and each defendant was committed to the custody of the Attorney General for a period of one year and one day.

On January 31, 1958 the defendants Henry and Pierotti filed their Notice of Appeal, and were enlarged on $2,500.00 bonds.

On March 7, 1958 the Trial Court entered an order, extending the time to docket and file the record on appeal to April 22, 1958.

/s/ Edward J. Calihan, Jr.
Edward J. Calihan, Jr.
/s/ James P. Piragine
James P. Piragine
Attorneys for Defendants

3 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January, being the 6th day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Eight and of the Independence of the United States of America, the 182nd Year.

Present:

Honorable Philip L. Sullivan, Chief District Judge
Honorable John P. Barnes, District Judge, Retired
Honorable William H. Holly, District Judge, Retired
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Win G. Knoch, District Judge
Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk

William W. Kipp, Sr., Marshal

Friday, January 24, 1958

Court met Pursuant To Adjournment

Present: Honorable Philip L. Sullivan, Trial Judge

4

UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

The May 1957 Grand Jury charges:

That on or about May 13, 1957, at Chicago, in the Northern District of Illinois, Eastern Division,

John Patrick Henry
and
Albert Rudolph Pierotti,

defendants herein, did unlawfully, willfully, knowingly and feloniously have in their possession certain goods and chattels, to wit,

3 cartons of radios,

of a value of, to wit, in excess of $100.00, which said goods and chattels had been theretofore unlawfully stolen, taken and carried away from a motor truck of the Ziffrin Truck Lines, on or about May 13, 1957, at Chicago, Illinois, and which said goods and chattels were then and there in the course of transportation from, to wit, Admiral Corporation, Chicago, Illinois, to, to wit, Bimel Company, Cincinnati, Ohio, all of which said goods and chattels were then and there a part of, then and there constituted, and were then and there moving as an
5 interstate shipment of freight through the Northern District of Illinois, and all of which said goods and chattels were then and there in the care, custody, control and possession of the Ziffrin Truck Lines, a corporation common carrier.

And the said defendants, at the time they had in their possession the said goods and chattels, as aforesaid, at Chicago, in the Northern District of Illinois, Eastern

Division, then and there well knew the same to have been stolen; in violation of Section 659, Title 18, United States Code.

A True Bill:
/s/ John J. Doherty

R. Tieken
United States Attorney

6 • • •
8

UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

MOTION TO SUPPRESS EVIDENCE
(Filed Jun 28 1957)

Your Petitioner, Albert R. Pierotti, respectfully shows that he is one of the Defendants in the above entitled cause, and is charged herein with violation of Section 659, Title 18, United States Code, in that on or about May 13, 1957, at Chicago, Illinois, he did knowingly and feloniously have in his possession certain goods and chattels, to wit, three cartons of radios, which had heretofore been stolen from an interstate shipment.

That on the aforementioned date, your Petitioner was driving a motor vehicle in the City of Chicago, State of Illinois. That on the aforementioned date certain agents of the Federal Bureau of Investigation, whose names are unknown to the Petitioner, curbed the vehicle in which the Petitioner was driving, and seized and obtained from the aforementioned vehicle the goods and merchandise, which is the subject matter of the within
9 indictment, and at the same time seized the keys of said vehicle. Your Petitioner further states that at the time of said search and seizure the aforementioned agents did not have a search warrant, a warrant of arrest, nor any other process for the arrest of your

Petitioner, and your Petitioner further states that the agents of the Federal Bureau of Investigation seized and searched the aforementioned articles prior to placing the Defendant under arrest or informing him of the charge or charges against him until he was taken to the Chicago Office of the Federal Bureau of Investigation. Your Petitioner further states that at the time of said search and seizure he was not in the commission of a violation of the City of Chicago, State of Illinois or any law of the United States of America.

That the aforesaid search and seizure was unwarranted, illegal and void in that it violates the Fourth Amendment of the Constitution of the United States, and the use thereof of any property seized as alleged evidence, infringes upon the privilege against incrimination as guaranteed by the Fifth Amendment of the United States Constitution; that at the time of said search and seizure, said federal officers had no warrant for the arrest of your Petitioner, nor were they possessed of any search warrant or other process authorizing their search of the aforementioned vehicle. Your Petitioner further shows that the United States Attorney intends to use the said evidence, so unlawfully seized, against your Petitioner on the trial of this cause.

Wherefore, your Petitioner prays for an Order by this Court declaring unreasonable, illegal and void the search made in the above entitled action, and precluding the United States Attorney from using the said evidence upon the trial and hearing of this cause.

/s/ Albert R. Pierotti

Petitioner, Albert R. Pierotti

State of Illinois }
County of Cook } ss.

Albert R. Pierotti, first being duly sworn, on oath deposes and says that he is the Petitioner named in the foregoing by him subscribed; that he has read the same, knows the contents thereof, and that the matter and things contained therein are true.

/s/ Albert R. Pierotti

Subscribed and sworn to
before me this 28th day
of June, 1957.
Howard Korengold
Notary Public

Received a copy of the above and foregoing Motion to Suppress Evidence, together with Brief in Support of Defendant Pierotti's Motion to Suppress Evidence, this 28th day of June, 1957.

/s/ R. Tieken E. Tillotson
Robert Tieken
United States Attorney

11

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57-CR-355). * *

MOTION TO SUPPRESS EVIDENCE
(Filed Sep 10 1957)

Your petitioner, John Patrick Henry, respectfully shows that he is one of the defendants in the above-entitled cause, and is charged herein with violation of Section 659, Title 18, United States Code, in that on or about May 13, 1957, at Chicago, Illinois, he did knowingly and feloniously have in his possession certain goods and chattels, to wit, three cartons of radios, which he had stolen from an interstate shipment.

That on May 13, 1957 your petitioner was a passenger in an automobile being driven in Chicago, Illinois by the co-defendant in this case. That on the aforesaid date, certain agents of the Federal Bureau of Investigation, whose names are unknown to this petitioner, curbed the vehicle in which the petitioner was riding, and seized and obtained from the said vehicle the goods and merchandise, which is the subject matter of the within indictment, and at the same time seized the keys of said vehicle.

12 Your petitioner further states that, at the time of said search and seizure, the aforementioned agents did not have a search warrant, a warrant of arrest, nor any other process for the arrest of your petitioner, and your petitioner further states that the said agents seized and searched the aforementioned articles prior to placing the defendant under arrest, and informing him of the charge or charges against him, until he was taken to the Chicago office of the Federal Bureau of Investigation. Your petitioner further states that at the time of said search and seizure, he was not in the commission of a violation of any law of the City of Chicago, State of Illinois, or the United States of America.

That the aforesaid search and seizure was unwarranted, illegal and void, in that it violates the Fourth Amendment to the Constitution of the United States, and the use of any property seized as alleged evidence infringes upon the privilege against incrimination, as guaranteed by the Fifth Amendment to the Constitution of the United States; that at the time of said search and seizure, the said federal officers had no warrant for the arrest of your petitioner, nor were they possessed of any search warrant, or other process, authorizing their search of the aforementioned vehicle.

Your petitioner further shows that the United States Attorney intends to use the said evidence, so unlaw-
13 fully seized, against your petitioner on the trial of this cause.

Wherefore, your petitioner prays for an order by this Court, declaring unreasonable, illegal and void the search made in the above-entitled action, and precluding the United States Attorney from using the said evidence upon the trial and hearing of this cause.

/s/ John Patrick Henry
John Patrick Henry,
Petitioner.

State of Illinois }
County of Cook } ss.

John Patrick Henry, being first duly sworn on oath, deposes and says that he is the petitioner named in the foregoing, by him subscribed; that he had read the same, knows the contents thereof, and that the matters and things contained therein are true.

/s/ John Patrick Henry

Subscribed and sworn to before me
this 9th day of September, 1957.
/s/ Ruth I. Quinlan
Notary Public

Received a copy of the above and foregoing Motion to Suppress Evidence, this 9th day of September, 1957.

/s/ B. Waters for R. Tieken
United States Attorney

14

UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

(Filed Sep 9 1957)

Now comes the United States by R. Tieken, United States Attorney for the Northern District of Illinois, and in answer to the motion of the defendant, Albert Rudolph Pierotti, to suppress evidence, states as follows:

1. That the Agents of the Federal Bureau of Investigation did not unlawfully arrest the defendant and did not make an unlawful search and seizure.

2. That the defendant does not allege ownership of the vehicle referred to in defendant's petition; neither does petitioner allege any property rights in, or ownership of the property sought to be suppressed.

Wherefore, the Government prays that an order be entered denying the motion of the defendant, Albert Rudolph Pierotti.

/s/ R. Tieken
R. Tieken
United States Attorney

BJW:af

16

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

TRANSCRIPT OF CERTAIN PROCEEDINGS

(Filed Mar 19 1958)

had in the above-entitled cause before the Honorable Philip L. Sullivan, chief judge of said court, in his court-

Q. What, if anything, did you say to the defend-
37 ants, or either of them, and what, if anything, did they say to you?

A. We asked them about the ownership of the car, and Mr. Pierotti said it wasn't his car, and he said it was Babe's car, and that he had borrowed it. And we asked him about the cartons that were in the car, and he said that they were in the car when he—

The Court: Just a minute. All right, go ahead.

By the Witness:

A. (Continuing) We asked him about the cartons that were in the car, and he said that they were in the car at the time he borrowed it from the owner.

By Mr. Waters:

Q. In response to Mr. Calihan's question you said you checked the ownership of the car. Did you subsequently interview the owner?

A. Yes.

Q. And to whom did he lend that car, if anyone?

A. He loaned the car to Mr. Henry that same day, previously that day.

Q. And not to Pierotti?

A. No.

38 Q. What, if anything, else was said by you to the defendants and by the defendants to you at that time and place?

A. Well, after they said, after Mr. Pierotti said the cartons were in the car at the time he borrowed it, we asked them if they had just been at the Red Top Lounge, and Mr. Henry said that he may have been earlier that day as he was visiting numerous taverns. Mr. Pierotti said he had just got off work at 2:30.

Q. Do you know of your own knowledge whether or not that was correct?

room in the United States Court House, at Chicago, Illinois, on October 22, 1957, namely the testimony of the witness George Stadtmiller.

Hon. Robert Tieken,
United States Attorney,
By: Mr. Bernard J. Waters,
Assistant United States Attorney,
appeared on behalf of the
Government;

Mr. Edward J. Calihan and
Mr. James P. Piragine,
appeared on behalf of the
Defendants.

17 GEORGE STADTMILLER, being first duly sworn, testified as follows:

The Court: What is your name?
The Witness: George Stadtmiller.
The Court: Will you spell the last name?
The Witness: S-t-a-d-t-m-i-l-l-e-r.
The Court: Where do you live?
The Witness: 3249 Kenwood, Hammond, Indiana.
The Court: What is your work?
The Witness: Special agent, FBI.
The Court: How long?
The Witness: 10 years.
The Court: Proceed.

Direct Examination by Mr. Calihan.

Q. Mr. Stadtmiller, calling your attention to on or about May 13, 1957, did you have occasion to make an arrest of the petitioners John Patrick Henry and Albert Rudolph Pierotti?

A. Yes, sir.

A. Well, I had seen him at 2:10 away from work.

Q. What, if anything, happened after that?

A. We told them that it looked like—

Q. Did you subsequently take them to your office at the Federal Bureau of Investigation?

A. Yes. We told them that the cartons looked like they had been stolen and that we had seen—

Q. Pardon me, Mr. Stadtmiller. When you stated you placed them under arrest at or about 4:00 or 4:30 that afternoon, if I recall your testimony correctly, did you refer by that to the placing of formal charges against
39 them with respect to the cartons found in the automobile.

A. Yes. We officially informed them that they were under arrest, and informed them of the charges, after we had determined where the cartons had come from and after we had consulted with the U. S. Attorney's Office.

Q. You did not consult yourself with anybody in the U. S. Attorney's Office?

A. No.

Mr. Waters: Thank you, Mr. Stadtmiller. Nothing further, your Honor.

Redirect Examination by Mr. Piragine.

Q. I believe you testified on cross-examination that you saw petitioner Henry carrying some cartons?

A. Yes.

Q. About 500 feet away?

A. 300.

Q. 300. I am sorry. And you didn't know whether the cartons were full or empty, is that correct?

A. No.

Q. You couldn't read any description of any kind
40 from that distance?

A. No.

Q. Now, at the time that you said to Pierotti that the cartons looked like they were stolen, that was after you

Q. Where did that arrest take place?

A. In the Chicago office, at 212 West Monroe.

18 Q. Chicago office of what??

A. Of the FBI.

Q. What time was that?

A. It was about, oh, five, about 5:00 o'clock, 5:00 P.M.

Q. Now, you state that you made the arrest at that time. When did you first take the petitioners into custody?

A. Well, I asked them to come down to the office about ten minutes to three.

Q. Well, now, prior to ten minutes to three, did you have occasion to stop them in your vehicle?

A. I was in a vehicle.

Q. Who was driving the vehicle?

A. John Oitzinger.

Q. Where were Mr. Pierotti and Mr. Henry?

A. They were in a car.

Q. Did you stop them in your car?

A. Yes.

Q. How was that stop made?

A. They were headed—they were driving south in the 2600 block of Wallace, and we were headed north, and we intercepted their path.

19 Q. You just pulled right in front of them on their side of the street?

A. We started toward them, and then we motioned, I motioned out of the window with my hand, for them to stop.

Q. And did they stop?

A. Yes.

Q. Who was driving the car?

A. Mr. Pierotti.

Q. Where was Mr. Henry?

A. In the front seat alongside of him.

Q. And you were in the car with Mr. Oitzinger who is also an agent of the FBI?

A. Yes.

Q. What, if anything, did you do at that time?

A. I got out of the car and started walking toward the driver's side of their car; and at that time Mr. Henry got out and we exchanged greetings, and I walked alongside the driver's side of the car.

Q. Where was Mr. Oitzinger?

A. He was getting out of the driver's side of our car, and walking toward the passenger side of the car.

Q. Did you then search the vehicle?

A. Well, as I walked alongside of it I looked in the car, and saw that there were cartons in the car.

Q. Cardboard cartons?

A. Yes.

Q. Any markings?

A. Yes.

Q. What type of markings?

A. They had an Admiral shipping label on them, showing that they were going to a company in Cincinnati.

Q. Were they sealed?

A. Two of them were and the flap was open on one of them.

Q. Did you search any place in the car?

A. Well, I looked in the back seat.

Q. How about the trunk?

A. Not at that time.

Q. Did you subsequently look in the trunk?

A. Yes.

Q. When?

A. It must have been about five minutes later.

Q. You just took the keys and opened the trunk?

A. I asked Mr. Pierotti whose car it was, and he said it was someone's named Babe.

21 Q. Did you verify the ownership of the car?

A. Yes.

Q. Was it Mr. Pierotti's car?

A. No.

Q. Was it Mr. Henry's car?

A. No.

Q. It was not in their possession unlawfully, was it?

A. The owner of the car said he had lent it to Mr. Henry.

Q. In other words, their possession of the vehicle was perfectly lawful insofar as you were concerned?

A. Well, as it later developed, yes.

Q Now what, if anything, did you turn up in the trunk of the car?

A. Nothing of any consequence.

Q. Well, what? Was there a carton in there too, of Turtle Wax cleaning material?

A. There was a carton of cleaning material, and a windshield cleaning device in the back seat on the floor.

Q. And did you check that material out to determine whether that was stolen?

22 A. Yes.

Q. And was it?

A. No.

Q. So that, after you searched the car and took these, you say there were three cartons, what, if anything, did you do with those cartons?

A. We asked them if they had—

Q. No. I am sorry. What did you do with the cartons?

A. We took them and put them in the Bureau car.

Q. What did you do with the defendants?

A. We asked them if they would come down to the office, and they got in the Bureau car and accompanied us down to the Chicago office.

Q. You left their car on the street?

A. Yes.

Q. Was it parked then, pulled over to the side?

A. Yes.

Q. What time was this, about 3:00 o'clock?

A. Yes, it was about a quarter to three, ten to three.

Q. And you went down to the Bureau then?

A. I didn't right then. I went down later.

Q. Did you summon the assistance of any other agents in the area?

A. Yes.

Q. When?

A. Shortly after we had stopped their car.

Q. How many units were in the area?

A. I don't know. One came that I know of.

Q. Well, subsequently weren't there more that came?

A. I think there was one came at the Wallace address, and then another one came at, in an alley at Lowe Street.

Mr. Waters: I object to any further questioning along that line. It is immaterial to this inquiry.

Mr. Calihan: Well, your Honor, I think I can develop that there were four cars present at one time with the defendants.

By Mr. Calihan:

Q. Is that true, there were four cars at one time with the defendants?

A. I don't know four cars; there may have been three at one time, but I don't know about four.

Q. Just on the evening prior, let us say the previous night, what, if anything, had occurred in that neighborhood by way of a loss?

A. Well, we had a loss referred to us from the Hayes Freight Lines, at 25th and Canal Streets.

Q. What was the nature of that loss?

A. I believe it was whiskey.

Q. And would it be a fair statement to state that you were in that neighborhood looking for some leads to the whiskey loss?

A. Yes.

Q. And in addition to the vehicle driven by Mr. Henry and Mr. Pierotti, did you stop other cars during that morning at any other time during that period?

A. Did I?

Q. Well, you or your partner, Mr. Oitzinger.

A. Not that I know of. I didn't.

Q. Did either you or Mr. Oitzinger stop a car driven by Mike Condello that morning?

A. Not that I remember.

Q. Do you know Mike Condello?

A. I don't believe I know him.

Q. Did you stop a vehicle driven by Steve Bedlow that morning?

A. I didn't, no.

Q. Do you know if he was stopped?

A. I had heard from another agent that he had been questioned, but I don't know where they questioned him or under what circumstances.

Q. Was that with reference to the Hayes whiskey thing?

The Court: Well, that was by some other agent.

Mr. Calihan: I am sorry. I withdraw the question.

By Mr. Calihan:

Q. Well, now, Mr. Stadtmiller, did you ultimately determine that the cartons which you took from the car were stolen?

A. Yes.

Q. When did you determine that?

A. It was between 4:30 and 5:00 o'clock.

Q. You determined then that they had been taken from the warehouse, from a motor truck of the Ziffrin Truck Lines, is that correct?

A. They told me that they had such a loss.

Q. That was the first time that it was called to your attention?

26 A. Yes.

Q. In other words, you called them and asked them to check; is that my understanding?

A. Yes.

Q. Did you call any other truck lines and ask them to check whether they had a radio loss?

A. Yes.

Q. And more specifically, did you call a Mr. Homer, Ralph Homer, IFC?

A. Holter.

Q. Who is IFC?

A. Indianapolis Forwarding Company.

Q. And he had indicated that they checked through everything and they couldn't find any such loss?

A. He said they had no recent loss of such a commodity.

Q. When did you present this matter to the United States Attorney, at what time?

A. I did not present it myself. Another agent did and—

The Court: That answered the question; he doesn't know.

By Mr. Calihan:

27 Q. If you know, do you know what time it was presented? If you know—if you don't—

A. I don't know. I heard about it shortly after we had determined where the merchandise came from.

The Court: On the same date?

The Witness: On the same day, yes. It would have been within fifteen minutes, ten or fifteen minutes, that is, before 5:00 o'clock.

By Mr. Calihan:

Q. It was presented before 5:00 o'clock, to the best of your knowledge?

A. Yes, to the best of my knowledge it was.

Q. Did you have a warrant for the arrest of either Mr. Pierotti or Mr. Henry at the time you stopped them in the vehicle?

A. No; not at the time, no.

Mr. Calihan: No further questions.

Mr. Waters: Do you have any questions, Mr. Piragine?

Mr. Piragine: No, I have no further questions.

28 *Cross Examination by Mr. Waters.*

Q. Mr. Stadtmiller, when on May 13th, about what time, did you first see the defendants Pierotti and Henry?

A. It was about 2:10 P.M.

Q. Where were they when you first saw them?

A. They were walking across the street from the Red Top Tavern, which is at 2903 South Wallace.

Q. And where did they walk?

A. They walked on the west side of the street, and entered a 1953 black-and-white two-door Ford.

Q. What, if anything, did they do after that?

A. They drove, with Mr. Pierotti driving, they drove to 30th Street, and turned west to Lowe, and then they drove north to 28th Street, and then west to an alley between Union and Emerald.

Q. Did their car come to a stop there?

A. Momentarily.

Q. What, if anything, happened then?

A. Then they backed up and headed back east, and turned north in an alley between Union and Lowe.

Q. When you say their car paused momentarily,
29 was that immediately prior to the entrance into the alley, straddling the pedestrian crosswalk?

A. Yes.

Q. What, if anything, happened after that?

A. After they were in the alley?

Q. After their car started up again from that pause at the pedestrian crosswalk.

A. They backed up and headed east and turned north into an alley between Union and Lowe.

Q. What, if anything, happened there, if you know?

A. Well, then I got out of the Bureau car, and walked to the south end of the alley, and about three-quarters of the way up the alley I saw their car was stopped, parked, and I saw Mr. Henry get out of the car and enter a gangway.

Q. Was Mr. Henry carrying anything when he got out of the automobile?

A. No.

Q. What, if anything, did you see next?

A. About two minutes later Mr. Henry returned from the gangway, and was carrying cartons. He walked around the front of the car and got in this car and the car drove north and turned east on 26th Street.

Q. Could you see who was driving?

A. Mr. Pierotti was still driving.

Q. What, if anything, happened then?

A. Well, we returned to the car we were driving, and drove north on Union Street to 26th, and we didn't see their car; so we drove to Normal Street on 26th, and turned south on Normal to 27th Street, turned west on 27th Street back to Wallace, and we saw the car that they were in parked across from the Red Top Lounge in the original position we had seen it.

Q. Was there anybody in the automobile at that time?

A. No.

Q. What, if anything, happened after that?

A. We parked—

Q. By "we," you refer to yourself and Mr. Oitzinger?

A. Yes. We parked on Wallace Street north of their car, and saw Mr. Pierotti and Henry come out of the Red Top Lounge, and talk with a person we know as Steve Bedlow, in front of the Red Top Lounge for several minutes.

31 Q. What happened after that?

A. Then Steve Bedlow walked north on Wallace, and Mr. Pierotti and Henry returned to the black-and-white Ford with Pierotti driving.

Q. Were they carrying anything?

A. No.

Q. What, if anything, happened after that?

A. They drove to 30th Street, and back north and returned to the alley between Union and Lowe, the same place we had seen them previously.

Q. What, if anything, did you observe at that point?

A. The car stopped, and Mr. Henry got out of the car, and went in the gangway, which would be west of the car, and was gone about two minutes and returned carrying cartons. He got in the car with the cartons.

Q. Did he place those cartons in the automobile?

A. I couldn't see him place them in the automobile, but he walked around the front of the car with the cartons.

Q. About how far away from him were you at that time?

A. About 300 feet.

32 Q. What, if anything, happened after that?

A. They drove north. The car drove north to 26th Street, and turned east. My partner and I got back in our car and drove east on 28th Street to Wallace.

Q. What, if anything, happened after that?

A. Well, as we approached the intersection of Wallace and 28th Street, we saw them heading south on Wallace, so we turned north.

Q. Both automobiles were approaching each other?

A. Yes.

Q. What, if anything, happened after that?

A. As we neared their vehicle we, at least I, waved to them from out of the window.

Q. Mr. Stadtmiller, when you say you waved to them, did both of these defendants know you?

A. Yes.

Q. And you knew them when you saw them?

A. Yes.

Q. You knew Steve Bedlow when you saw these defendants talking to him?

A. Yes.

Q. Had you had previous conversation with the defendant Pierotti and with the defendant Henry?

33 A. Yes.

Mr. Calihan: Objection, if the Court please.

The Court: The answer may stand.

By Mr. Waters:

Q. What was the general nature of those conversations?

Mr. Piragine: Objection.

The Court: Sustained.

By Mr. Waters:

Q. Mr. Stadtmiller, you have testified in response to some questions put to you by Mr. Calihan, that you were in that area in connection with the investigation of a theft of an interstate shipment; that is correct, is it not?

A. Yes, sir.

Q. Had you ever received any information concerning the implication of the defendant Pierotti with interstate shipments?

Mr. Piragine: Object.

The Court: He may answer.

By Mr. Waters:

Q. Will you answer that, please?

The Court: Yes or no.

34 By the Witness:

A. Yes.

By Mr. Waters:

Q. From whom did you receive that information?

A. Mr. Lieberman, vice-president of Ziffrin Truck Lines.

Q. Is Mr. Lieberman the employer of the defendant Pierotti?

A. Yes, sir.

Q. When the defendants recognized you, what, if anything, did they do with their automobile as you approached?

A. They stopped.

Q. And that was in response to your waving your hand?

A. Yes.

Q. What, if anything, happened when they stopped their automobile?

A. Well, Mr. Henry got out of the car and started walking.

Q. Which door did he get out of?

A. The passenger side.

Q. Did he leave that door open or did he close it after him?

35 A. He left the door open.

Q. Did that door remain open?

A. Yes.

Q. What, if anything, happened then?

A. Well, I walked alongside the driver's side, and Mr. Oitzinger walked along the passenger side.

Q. You have testified in response to Mr. Calihan's question that you saw cartons in there, bearing markings

which indicated that they were part of an interstate shipment, is that correct?

A. Yes.

Q. What, if anything, did you say to the defendants, or did either of the defendants say in your presence at that time and place?

A. I asked Mr. Pierotti if that was—

Q. Pardon me, Mr. Stadtmiller, before that. Had you got out of your automobile? Did Mr. Henry say anything immediately after you got out of your automobile and he got out of the passenger side of his automobile, leaving the door open; did he say anything in your presence?

A. To me?

Q. To anyone.

36 A. Well, I was getting out of the car at the same time, but I thought I heard him say to Mr. Pierotti, "Hold it. It is the G's."

Q. Did he say anything to Mr. Pierotti after that, in your presence?

A. Yes.

The Court: Let me see, what was that he said?

The Witness: "Hold it; it is the G's."

The Court: Who was he talking to?

The Witness: Mr. Pierotti.

By Mr. Waters:

Q. Did he address any further remark to Mr. Pierotti in your presence at that time and place?

A. Shortly after he did.

Q. What, if anything, did he say to him then?

A. He said, "Tell him he just picked me up."

Q. At that time did you have a conversation with the defendants Henry and Pierotti?

A. Yes.

Q. Who else was present if anyone?

A. John Oitzinger.

had examined them, is that correct, in the car?

A. I saw them in the car.

Q. You made this statement after you had observed the three cartons in the car, is that correct, and examined them?

A. Yes, sir.

Q. And the description on there which you testified to on direct?

A. Yes.

Q. Is that correct?

A. Yes.

Q. When you made this statement you did not know they were stolen from the Ziffrin Truck Lines, is that correct?

A. No.

Mr. Piragine: That is all.

The Court: Anything further?

Mr. Waters: Nothing further.

(Witness excused.)

41 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

CERTIFICATE

I hereby certify that the foregoing 25 typewritten pages, numbered consecutively from 1 to 25, inclusive, are a true and accurate transcript of my original official shorthand notes taken of the testimony given by the witness George Stadtmiller in the above-entitled cause before Honorable Philip L. Sullivan, chief judge of said court, on October 22, 1957.

/s/ Alfred H. Frederick
Alfred H. Frederick
Official Court Reporter
United States District Court
Northern District of Illinois

January 17, 1958

42 UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

AMENDMENT TO MOTION TO SUPPRESS EVIDENCE

(Filed Nov 25 1957)

Comes now Albert R. Pierotti, Petitioner and Co-Defendant in the above entitled matter, and states that on June 28, 1957 he filed his Motion to Suppress Evidence of the goods and merchandise as alleged in the within indictment, and states as follows: That he was in possession on May 13, 1957 of the within described goods and merchandise as specified in the indictment, and that he had a proprietary interest in said goods and merchandise.

/s/ Albert R. Pierotti
Petitioner
Albert R. Pierotti

43 State of Illinois }
County of Cook } ss:

Albert R. Pierotti, first being duly sworn, on oath deposes and says that he is the Petitioner named in the foregoing by him subscribed; that he has read the same, knows the contents thereof, and that the matter and things contained therein are true.

/s/ Albert R. Pierotti

Subscribed and Sworn to before me
this 25 day of November, 1957.
/s/ Dolores Ladendorf
Notary Public.

(Seal)

138 IN THE UNITED STATES DISTRICT COURT

Friday, April 18, 1958

Present Honorable Michael L. Igoe, District Judge

• • (Caption—No. 57 CR 355) • •

On stipulation of the parties through their respective counsel filed herein on this date, it is

Ordered that the copy of the defendant John Patrick Henry's Amendment to Motion to Suppress Evidence attached to said stipulation may be used herein in lieu of the original of said document, the original Amendment to Motion to Suppress Evidence, filed on November 27, 1957, having been mislaid.

135 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

STIPULATION

(Filed Apr 18 1958

It Is Hereby Stipulated And Agreed by and between the parties hereto, through their respective counsel, that the attached copy of the defendant, John Patrick Henry's Amendment to Motion to Suppress Evidence may be used in lieu of the original of said document, because, the original Amendment to Motion to Suppress Evidence, which was filed on November 27, 1957, has been mislaid.

/s/ R. Tieken
R. Tieken
United States Attorney
Attorney for Plaintiff

/s/ Edward J. Calihan, Jr.
Edward J. Calihan, Jr.
Attorney for Defendant,
John Patrick Henry

/s/ James P. Piragine
James P. Piragine
Attorney for Defendant,
Albert Rudolph Pierotti

Dated: April 18, 1958.

136 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

AMENDMENT TO MOTION TO SUPPRESS EVIDENCE

Now comes John Patrick Henry, petitioner and co-defendant in the above-entitled matter, and states that on September 10, 1957 he filed his Motion to Suppress Evidence of the goods and merchandise, as alleged in the within indictment, and states as follows:

That on May 13, 1957 he was in possession of the within described goods and merchandise, as specified in the indictment, and that he had a proprietary interest in the said goods and merchandise.

/s/ John Patrick Henry
John Patrick Henry
Petitioner.

137 State of Illinois }
County of Cook } ss:

John Patrick Henry, being first duly sworn on oath, deposes and says that he is the petitioner named in the foregoing, by him subscribed, that he has read the same, knows the contents thereof, and that the matters and things contained therein are true.

/s/ John Patrick Henry

Subscribed and sworn to before me
this 27th day of November, 1957.
/s/ Ruth Quinlan
Notary Public

(Seal)

45 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

TRANSCRIPT OF PROCEEDINGS
(Filed Mar 19 1958)

had in the above-entitled cause before the Honorable Philip L. Sullivan, Chief Judge of said court, in his courtroom in the United States Court House, at Chicago, Illinois, on November 25, 1957.

Hon. Robert Tieken,
United States Attorney,
By: Mr. Bernard J. Waters,
Assistant United States Attorney,
appeared on behalf of the Government.

Mr. Edward J. Calihan
and
Mr. James P. Piragine,
appeared on behalf of the defendants.

46 The Clerk: 57 CR 355. United States of America v. John Patrick Henry and Albert Rudolph Pierotti. Motion by defendant Pierotti for leave to file amendment to motion to suppress. Also up for trial.

Mr. Piragine: Good morning, your Honor. I am appearing on this matter and asking leave to file instanter amendment to the original motion to suppress as to the defendant Pierotti.

Mr. Waters: Your Honor has disposed of that motion adversely to the defendants. What they are filing now is an amendment to their original motion.

Mr. Calihan: Your Honor, I would like leave to file the same type of amendment by Wednesday, let us say.

The Court: I have forgotten.

Mr. Piragine: This was a case, your Honor, where we alleged that the arrest was illegal, where the FBI Agents had stopped the defendants. They were on an investigation for the hijacking of a load of liquor, and by chance they came upon three cartons of radios.

The Court: Well, what amendments have you?

47 Mr. Piragine: The reason I am filing this amendment, the Government raised some objection that in our original motion to suppress petition we did not allege a proprietory possessory interest. As far as I remember the record, the court did not rule on that particular objection the Government raised.

I would like to have, if it is agreeable to the court, although your Honor has ruled adversely on our motion, if your Honor sees fit, to have us file a brief.

The Court: No. I have that in mind and have your motion in mind and had at the time. You did not set up there your interest at all in filing the original motion.

Mr. Piragine: No, not in the original motion.

Mr. Calihan: Your Honor will recall that we argued the Chieppa case stated the occupants of an automobile have enough of a possessory interest; but it is our thinking, your Honor, in the event this should go forward from the trial level that we ought to amend our motion alleging a possessory interest.

The Court: Well, I think probably I will permit

48 that.

Mr. Waters: Your Honor will recall, in the course of the hearing, it was an extended hearing.

The Court: Yes, I remember it.

I will have to set this motion down.

Mr. Waters: Your Honor, perhaps counsel would have no objection if you would care to incorporate that in the trial of the case when we reach it and pass on it at that time.

Mr. Piragine: This is merely an amendment to the original—

Mr. Waters: These motions have been passed on by your Honor.

The Court: I think it has been passed on, and so I don't think there is any further hearing.

Mr. Calihan: If your Honor's ruling will be the same, we will then set it for trial.

The Court: When do you want to try it?

Mr. Piragine: According to my calendar, if agreeable with your Honor and the Government, I would like it after the first of the year.

Mr. Waters: That is agreeable with the Government, your Honor.

The Court: January 23.

50

TRANSCRIPT OF PROCEEDINGS
(Filed Mar 19 1958)

had in the above-entitled cause before the Honorable Philip L. Sullivan, Chief Judge of said court in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 22, 1958, at 10:00 o'clock a. m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), by Bernard J. Waters, Esq., Asst. United States District Attorney,
on behalf of the Government;

Edward J. Calihan, Jr., Esq.,
(105 West Adams Street, Chicago 3, Ill.),
on behalf of the Defendant
John Patrick Henry;

51 James P. Piragine, Esq.,
(209 South LaSalle Street, Chicago 4, Ill.),
on behalf of the Defendant
Albert Rudolph Pierotti.

(Mr. Calihan and Mr. Piragine were not present until January 23, 1958 at 10:00 a.m.)

52 And thereupon the following proceedings were had herein:—

The Court: Do you have something, Counsel?

Mr. Waters: Good morning, Judge. I just would like to ask whether or not I have a case up tomorrow, if I should bring some witnesses in on it. It is a case which I know will be very short because there is a charge of possession of goods which, in the course of interstate commerce, were stolen. The defendants, in a sworn statement—I mean, a stipulation has been entered into by both the defendants. The goods mentioned in the indictment were in the course of interstate commerce and were stolen while in the possession of the truck lines named in the indictment. They had a statutory value. The motion to suppress had been denied.

Actually, there isn't anything much more to it. We have pretty much established everything we have to. We will just put on a couple of witnesses to show that the goods were in the possession of the defendants, even though they admit it, and another witness—

The Court: If it is admitted, why do you have to prove it?

53 Mr. Waters: I understand they are going to appeal on the motion anyway. That is the only reason.

The Court: This was the case of—

Mr. Waters: Henry and Pierotti, your Honor. We had the motion to suppress before the Court.

The Court: Is this the case where they found an automobile?

Mr. Waters: That is correct.

The Court: The automobile was abandoned or stopped for some other reason?

Mr. Waters: That is right, Judge.

The Court: And I denied the motion.

Mr. Waters: You denied that motion.

The Court: I would think that everything is wound up in that motion.

Mr. Waters: I think it is too, Judge.

The Court: Where are your witnesses from?

Mr. Waters: All the witnesses which I would propose to present in that case are right here in Chicago. Some other witnesses have been subpoenaed, but, since those subpoenas went out, the stipulation has been entered into and, as a consequence, I wouldn't call them to testify.

The Court: Well, if you can dispose of it in a 54 short time, I will hear you.

Mr. Waters: Very well, your Honor. I will expect, then, to bring in probably two or three witnesses and they will be short witnesses.

The Court: Will they have any witnesses, do you know?

Mr. Waters: I don't think so, Judge. I am informed by counsel that their defense will be a nominal one.

The Court: Well, come in tomorrow morning and I will see if I can hear you.

Mr. Waters: Very well, your Honor. Thank you.

(Thereupon an adjournment was taken in the above-entitled cause to Thursday, January 23, 1958, at the hour of 10:00 o'clock a. m.,

55

• • (Caption—No. 57 CR 355) • •

Chicago, Illinois,
Thursday, January 23, 1958,
10:00 o'clock a. m.

Court resumed pursuant to adjournment.

Present:

Mr. Waters
Mr. Calihan
Mr. Piragine

And thereupon the following further proceedings were had herein:—

The Clerk: No. 57 CR 355, United States of America vs. John Patrick Henry and Albert Rudolph Pierotti, for trial.

Mr. Waters: Good morning; I believe we are ready.

Mr. Piragine: Ready on behalf of the defendant Pierotti.

Mr. Calihan: Ready on behalf of the defendant
56 Henry.

The Court: This is the case on which I heard the motion to suppress?

Mr. Waters: That is right. There has also been a stipulation entered into by the defendants as to the interstate shipment, the value of the articles and the fact they were stolen on the date alleged in the indictment and from the place alleged in the indictment, and the pleadings likewise are verified pleadings in which an affidavit incorporates a claim of possession by the defendants. I believe it would be a short case.

The Court: Has the jury been waived in the case?

Mr. Piragine: I don't believe we have signed a jury waiver.

Mr. Calihan: We will, if you wish, your Honor.

The Court: If it is going to be short, I will hear it.

Mr. Calihan: How many witnesses do you have?

Mr. Waters: I think three or four.

Mr. Calihan: Four witnesses?

Mr. Waters: Yes; not any more than that, none of which I expect to take any longer, except possibly the last one, than five or ten minutes each.

The Court: All right; I will see what we can do,
57 if it won't take very long.

(Thereupon the Court gave attention to other matters on his call, after which the following further proceedings were had herein:—)

The Clerk: No. 57 CR 355.

Mr. Piragine: At this time, your Honor, on behalf of the defendant Pierotti, I make a motion to exclude the witnesses.

The Court: All right. All witnesses please step forward and be sworn.

Mr. Waters: I will have them come in in a moment. and before they come I ask leave for the Court to designate Special Agent Stadtmiller to remain.

The Court: That is all right. Excuse me.

(Thereupon a short recess was taken.)

The Court: Proceed.

58 WILBUR HOLTZ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name?

The Witness: Wilbur Holtz.

The Court: Where do you live?

The Witness: 4139 West 38th Place.

The Court: What do you do?

The Witness: Truck driver.

The Court: Proceed.

Direct Examination by Mr. Waters.

Q. Directing your attention, Mr. Holtz, to on or about the 13th day of May, 1957, where were you that day?

A. In Phil's Tavern.

Q. Did you see anyone there?

A. Yes.

Q. Did you see John Patrick Henry, the defendant in this case?

A. Yes, I did.

Q. Do you see him in the court room today?

59 A. Yes.

Q. Will you point him out, please?

A. There.

Mr. Waters: Indicating for the record that the witness has identified the defendant John Patrick Henry.

By Mr. Waters:

Q. Did you have a conversation with him at that time? Yes or no.

A. Yes.

Mr. Piragine: On behalf of the defendant Pierotti, I object to any conversation.

The Court: He wasn't there?

Mr. Waters: Pierotti was not.

The Court: That will apply to John Patrick Henry only.

By Mr. Waters:

Q. What did Henry say to you and what did you say to him?

A. I was talking about horses that morning, or we was, and I happened to like a special horse in the race and asked him if he knew where I could bet the horse, and he said, "Not right offhand," that he would

60 try to find out.

Q. What else did he say or did you say?

A. I asked him if it was very far, that he could use my car because it was such a bad day.

Q. Did you give him the keys to your car?

A. Yes, I did.

Q. Did he take your automobile?

A. As far as I know he did.

Q. Will you describe your automobile?

A. A 1953 Ford, Victoria.

Q. Will you describe what was in your automobile when he took it?

A. A spare tire.

Mr. Calihan: Objection to that unless there is some foundation that he knew the condition of the car, or unless—

The Court: I take it he saw this.

Mr. Waters: It is his automobile, your Honor.

The Court: And he saw what was in it, is that right?

Mr. Waters: He will testify, your Honor—

The Court: Go ahead.

61 By Mr. Waters:

Q. What was in your automobile?

A. A spare tire and some tools, seat cover, a little windshield washer kit and a couple of cans of polish.

Q. Were there any Admiral cartons in your automobile on that date?

A. No, there weren't.

Q. I show you Government's Exhibits 1, 2 and 3 for identification, and I ask you if you have ever seen those cartons before?

A. No, sir; I have not.

Mr. Waters: Thank you. Nothing further, your Honor.

The Court: Cross examine.

Cross Examination by Mr. Calihan.

Q. What time of the day or night was this on May 13th, 1957?

A. Around noon time, right after noon.

Q. 12:00 o'clock noon?

A. I wouldn't say it was right on the head. It was after that, I am pretty sure.

62 Q. How long had you been in the tavern?

A. Since about 7:30 in the morning.

Q. Had you been drinking?

A. I was, sir.

Mr. Calihan: I have no further questions.

The Court: Call the next; that is all.

Mr. Waters: Step down, please.

(Witness excused.)

WALLACE NUNES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name?

A. Wallace Nunes.

The Court: And your address?

The Witness: 3234 South Wallace.

The Court: What do you do?

The Witness: Dock hand.

The Court: Pardon?

The Witness: Dock hand.

The Court: Where?

63 The Witness: Ziffrin Truck Lines.

The Court: How long have you been there?

The Witness: Three years this March the 7th.

The Court: Proceed.

Direct Examination by Mr. Waters.

Q. Do you know the defendant, Albert Pierotti?

A. I do.

Q. Do you see him in the court room today?

A. I do.

Q. Will you point him out, please?

A. There.

Mr. Waters: Indicating, for the record, may it please the Court, the witness has identified the defendant Albert Pierotti.

By Mr. Waters:

Q. Directing your attention to the 13th of May, 1957, were you employed by the Ziffrin Truck Lines?

A. I was.

Q. Will you state what you did on May the 13th, 1957?

64 A. I handled freight, unloaded interline freight.

Mr. Piragine: Speak a little louder, please.

By the Witness:

A. Unloaded interline freight.

By Mr. Waters:

Q. Who else was working with you that date, if anyone?

A. Myself, Al Pierotti and Joe T.

Q. Will you spell the name of Joe T. for the record, if you know?

A. I don't know the spelling of it.

Mr. Piragine: Pronounce it, please.

The Witness: T. The first name is Joe. The last name starts with a T.

By Mr. Waters:

Q. Pierotti was working with you also?

A. Yes.

Q. Will you tell us what, if anything, you did with respect to a Steffke load on that date?

The Court: What?

By Mr. Waters:

Q. A load that came in from Steffke Freight Lines with Admiral products.

65 A. A Steffke trailer backed to our dock in the morning, and it had an assignment of Admiral products bound for Cincinnati. We unloaded that for Steffke and put it on our outbound for Cincinnati.

Q. By "we" who do you mean?

A. Three men at that time; myself, Joe T. and Al Pierotti.

Q. What did you do?

A. Trucking.

Q. What did Joe T. do?

A. Joe T. was trucking and checking.

Q. What did Al Pierotti do, if anything?

A. Pierotti was stacking cartons.

Q. Where was he stacking the cartons?

A. He was stationed in the trailer.

Q. Was he alone in there?

A. He was alone.

Q. Were those cartons loaded on the Ziffrin trailer?

A. Yes.

Q. Were they counted on?

A. Yes.

Q. Was the count accurate?

66 A. Yes.

Q. I show you Government's Exhibits 1, 2 and 3, for identification, and I ask you if these cartons are similar to the cartons you loaded on May the 13th?

A. They are similar.

Mr. Waters: Nothing further.

Mr. Calihan: I object to all of his testimony as to the defendant Henry.

The Court: It will apply to the other defendant only.

Cross Examination by Mr. Piragine.

Q. Mr. Nunes, how many cartons were loaded, do you know, on that date, similar cartons to these that Mr. Waters has exhibited?

A. My actual count I wouldn't know, because I have no record of receiving the stated amount that came from that trailer.

Q. Did the three of you unload them from the Steffke trailer onto the Ziffrin trailer, did you say?

A. That is right.

67 Q. The three?

A. Two of us.

Q. Two?

A. Yes.

Q. Who were the two?

A. Joe T. and myself.

Q. You don't know what happened to all those cartons after they were loaded on the Ziffrin trailer, do you?

A. No, sir.

Q. I take it you went on to load or unload other merchandise at the dock?

A. That is right.

Q. You continued with your work?

A. That is right, sir.

Q. You don't know if that trailer in which you loaded these cartons which you testified to, similar to the three cartons Mr. Waters showed you, whether that trailer was locked or unlocked after you had concluded your part of your work on the loading of that trailer, do you?

A. That trailer was open.

Q. Was open?

A. Yes, sir.

68 Q. When did you leave, if you know—the time I am referring to—that particular Ziffrin trailer?

A. When did I leave?

Q. Yes; when did you conclude with your work with reference to—

A. Well—

Q. Just a minute, so you understand my question.

When did you leave the Ziffrin trailer in reference to these Admiral cartons, the time when you concluded?

A. At the conclusion of unloading the Steffke trailer we assumed our natural duties, that is myself, Joe T. and Al Pierotti. We resumed our duties of unloading and taking care of the interline freight.

Q. My question is, sir, when did you conclude?

The Court: When did you leave there that night or that day?

Mr. Piragine: No, Judge; I mean when did he finish.

The Court: What?

Mr. Piragine: When did he finish loading these cartons on the Ziffrin trailer.

69 The Court: All right.

By Mr. Piragine:

Q. What time was it? Do you understand my question?

A. I would say it took us approximately a half hour to unload the trailer.

The Court: What time did the trailer leave?

The Witness: Sometime close to noon time when the trailer was unloaded, sometime close to noon time.

By Mr. Piragine:

Q. You are talking about, I take it, the unloading, is that right? Do you know the time when these cartons were loaded on the Ziffrin trailer, Mr. Nunes?

A. All I know is they were loaded in the morning. What time I couldn't say.

Q. You do not know?

A. I don't know.

Mr. Piragine: That is all.

Mr. Waters: Briefly one question on redirect.

70 *Redirect Examination by Mr. Waters.*

Q. Did you have a conversation with Mr. Pierotti with respect to quitting time after this trailer was loaded?

A. I did.

Q. What did you say to him and what did he say to you?

Mr. Piragine: I object. It isn't proper redirect.

The Court: You may answer.

By the Witness:

A. Mr. Pierotti wanted to leave about 1:30, and I agreed to punch his time card out.

By Mr. Waters:

Q. Did he leave at 1:30?

A. I believe he did.

Q. Did you punch his time card?

A. I did.

Q. What time did you punch it?

A. 2:30.

Mr. Waters: Thank you. Nothing further, your Honor.

The Court: Anything further?

71 *Recross Examination by Mr. Piragine.*

Q. What time did the Ziffrin truck leave, do you know?

A. To the best of my knowledge it would be around noon time, probably a quarter of 12.00, twenty minutes of 12:00.

Q. That the Ziffrin trailer left?

A. That, I wouldn't know, sir, because my hours terminated at 2:30 in the afternoon. That trailer was still there at the dock to receive freight going to its destination. What time it left, I wouldn't know.

Q. Then you punched out Mr. Pierotti at 2:30, is that right?

A. That is right.

Q. And you saw him leave the dock?
A. I did, sir.
Q. Was he empty-handed?
A. Yes, sir.
Mr. Piragine: That is all.
Mr. Waters: Step down, please.

(Witness excused.)

72 JOSEPH TEODORCZYK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name?
The Witness: Joseph Teodorczyk.
The Court: Where do you live?
The Witness: 5028 South Throop.
The Court: What do you do?
The Witness: I am a checker.
The Court: What?
The Witness: Checker for Ziffrin Truck Lines.
The Court: A checker?
The Witness: Yes, sir.
The Court: All right.

Direct Examination by Mr. Waters.

Q. Are you sometimes also known as Joe T.?
A. That is right.
Q. Were you so employed by Ziffrin Truck Lines on May the 13th, 1957?
A. Yes, sir.
73 Q. What were your duties on May the 13th, 1957?
A. Checker.
Q. Did you have occasion to be in the company of Al Pierotti—incidentally, do you know Albert Pierotti?
A. Sir?
Q. Do you know Albert Pierotti?

A. Yes, sir.

Q. Do you see him in the court room today?

A. Yes, sir.

Q. Will you point him out, please?

A. Right there.

Mr. Waters: Indicating, if it please the Court, the witness has identified the defendant Al Pierotti.

By Mr. Waters:

Q. In the company of Al Pierotti and Wallace Nunes did you have occasion to load Admiral products on a Ziffrin trailer?

A. Yes, sir.

Q. Was anybody else present?

A. Other dockmen were around.

Q. With respect to that physical loading?

A. Just three on that shipment.

74 Q. Will you tell us, please, what you did?

A. I received the shipment from Steffke.

Q. What, if anything, happened after that?

A. What do you mean?

Q. Did you then load it onto the Ziffrin trailer?

A. I loaded it on one of our trailers.

Q. Did you have occasion to make a count of the cartons coming off the Steffke trailer?

A. I counted them.

Q. Was that count accurate?

A. Yes, sir.

Q. Did you count them onto the Ziffrin trailer?

A. Yes, sir.

Q. Where, in the Ziffrin trailer, were they loaded, if you know?

A. Across the dock.

Q. In what part of the trailer were they loaded?

A. Right in the front.

Q. Commonly called the nose of the trailer, the part nearest the tractor?

A. No, sir; there was no tractor around there.

Q. I say that is the very front of the trailer?

A. Yes, sir.

Q. Who stacked them?

75 A. Al Pierotti.

Q. Was he alone in there when he was stacking them?

A. Yes, sir.

Q. What did you do with respect to the movement of those cartons into the trailer?

A. I would wheel them from the Steffke truck across the dock to the trailer, and I was stacking first.

Q. Were they counted accurately on the Ziffrin trailer?

A. Yes, sir.

Q. Did all of this happen in Chicago in the Northern District of Illinois?

A. Yes, sir.

Mr. Waters: Thank you.

Mr. Calihan: I object to his testimony as to the defendant Henry, your Honor.

The Court: It would apply only to the one present.

Cross Examination by Mr. Piragine.

Q. Mr. Witness, you received this shipment, you

76 say, from the Steffke trailer?

A. Yes, sir.

Q. Where was that trailer in reference to the Ziffrin trailer, approximately?

A. Across the dock about forty or fifty feet.

Q. About forty or fifty feet?

A. Yes.

Q. Did I understand you to testify you wheeled them from the Steffke trailer to the Ziffrin trailer, is that correct?

A. Yes, sir.

Q. And do you know how many cartons there were?

A. Offhand I don't remember that shipment.

Q. You don't remember?

A. No.

Q. All right. You say that the defendant Pierotti had stacked them in the Ziffrin trailer, is that correct?

A. Yes, sir.

Q. Was there any other merchandise, if you know?

A. There was other freight.

Q. Just a moment, please.

Was there any other merchandise placed in the Ziffrin trailer after Pierotti had stacked these Admiral car-
77 tons, as you have testified?

A. Yes, sir, there was other freight went in.

Q. Other freight?

A. Yes, sir.

Q. Do you recall what type of freight?

A. Well, no, I don't recall.

Q. Do you recall what dock handlers put this other freight in the Ziffrin trailer?

A. No, sir; I don't know. See, there are three checkers. There were two or three checkers.

Q. Who were the other individuals working there at that time?

A. Howard Lutz.

Q. Yes, sir—

A. He could have stacked freight behind there, too.

Q. All right. Who else, sir?

A. Me.

Q. Yourself?

A. Yes.

Q. Who else?

A. Almost anybody that works on the dock there.

Q. How many employees are there? You are a checker, are you?

78 A. Yes, sir.

Q. How many employees were there at that time?

A. There was about twelve of us, I think.

Q. And they are all freight handlers, so to speak; is that what they are called?

A. Yes, sir.

Q. They load and unload trucks, is that correct?

A. Yes, sir.

Q. And there were about twelve?

A. About twelve.

Q. About twelve at that time, is that correct?

A. Yes, sir.

Q. How long is the dock at Ziffrin?

A. I don't know—a couple of hundred feet.

Q. Approximately how many trailers can back up to the dock?

A. Twelve on each side.

Q. Are the truck drivers, that is, the drivers who back up the Ziffrin trailers and tractors, are they around the docks?

A. They walk around the dock, yes.

Q. They walk around the dock?

A. Yes, sir.

Q. Are there other truck drivers, other than Zif-
79 frin employees, who deliver freight such as the Steffke Truck Lines?

A. Yes, sir.

Q. Are they around there waiting for their trailer to be loaded or unloaded?

A. Yes, sir; they are hanging around there.

Q. How many truck drivers, in addition to the twelve dock handlers, were there on May the 13th, 1957, in the morning up to noon, to the best of your recollection, Mr. Teodorczyk?

A. They keep coming in and out. Sometimes there are four or five of them at a time in there.

Q. Were there six or ten?

Mr. Waters: Pardon me. Your Honor, this is considerably beyond the scope of the direct examination.

The Court: He may answer.

By Mr. Piragine:

Q. Would you answer that?

A. What is that?

Q. Would you say there were at least six truck drivers?

A. Yes, sir, I would say that.

Q. Or more?

80 A. Maybe more.

Q. Did you see them walking on the dock?

A. Yes, sir.

Q. Where the cartons of Admiral radios were unloaded and loaded in the Ziffrin trailer?

A. No, sir; they were on the other side, on the receiving end.

Q. Do you know, Mr. Witness, how many other Ziffrin employees placed other freight, that is, loaded into the Ziffrin trailer after Mr. Pierotti had packed up, I believe you said, the Admiral cartons?

A. There was about four of us after that that kept loading it up with more freight.

Q. About four others besides yourself, Mr. Pierotti and Howard Lutz, is that correct?

A. Yes, sir.

Q. That would be a total of at least seven people who entered the Ziffrin trailer?

A. Yes, sir.

Q. At one time or another?

A. Yes, sir.

Q. After the Admiral cartons had been loaded?

A. Yes, sir.

81 Q. By Pierotti?

A. Yes, sir.

Q. Did you see Mr. Pierotti leave that particular date?

A. No, sir.

Mr. Piragine: That is all.

Mr. Waters: Nothing further, your Honor.

(Witness excused.)

JOHN J. OITSZINGER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name?

The Witness: John J. Oitszinger.

The Court: Where do you live?

The Witness: 18 Bigelow Road, Park Forest, Illinois.

The Court: What do you do?

The Witness: Special agent in the Federal Bureau of Investigation.

The Court: All right.

82 *Direct Examination by Mr. Waters.*

Q. Were you so employed on May the 13th, 1957?

A. Yes.

Q. What were your official duties on that date? To what squad were you assigned?

A. We were assigned to investigate a theft from an interstate shipment. It was a loss at Hayes Freight Lines, a truckload of whiskey.

Q. Mr. Oitszinger, on May the 13th, in the afternoon hours did you have occasion to position yourself at the mouth of an alley on the south side of Chicago?

A. Yes.

Q. Would you tell us where that alley was?

A. That alley was between Lowe Street and Union, and the alley ran from 26th to 28th.

Q. While you were at that alley, was anybody else with you?

A. Yes.

Q. Who was there?

A. Agent Stadtmiller.

Q. What, if anything, did you see then?

A. I saw a 1953 Ford automobile which was driven
83 by Mr. Pierotti accompanied by Mr. Henry.

Q. Do you see those gentlemen in the court room today?

A. Yes.

Q. Will you point them out, please?

A. Mr. Pierotti is behind Mr. Piragine, and Mr. Henry is sitting alongside Mr. Calihan.

Mr. Waters: Indicating, for the record, if it please the Court, the witness has identified the defendants.

By Mr. Waters:

Q. Did what you are testifying to happen in Chicago in the Northern District of Illinois?

A. Yes.

Q. Will you tell us what, if anything, they did at that time and place?

A. Mr. Henry got out of the passenger's side of the automobile, walked around the front of the automobile and entered a gangway to the west. Several minutes later he came out carrying some cartons. He got back into the automobile, and they drove off.

Q. At that time did you have occasion to take a photograph of the incidents you have described?

84 A. No.

Q. What, if anything, happened after that?

A. We got back into our Bureau automobile and proceeded west on 28th Street and north on Union, east on 26th Street, and we couldn't see their car, so we cruised around, and several minutes later we were going down

South Wallace, and as we were approaching 29th Street we could see their automobile parked in the position we had seen it previously.

Q. Near what building was it parked?

A. It was parked across the street from the Red Top Lounge.

Q. It that a tavern?

A. That is a tavern.

Q. Did you have occasion to follow that automobile back to where you saw it in the alley again?

A. Yes.

Q. Will you describe what happened at that time?

A. We followed—before following the automobile, we watched the automobile, and several minutes later three men came out of this tavern, Steve Bedalow, Mr.
85 Pierotti and Mr. Henry. Steve Bedalow continued to walk north on Wallace Street. Mr. Pierotti and Mr. Henry got back into the automobile. Mr. Pierotti was behind the wheel. They drove south to 30th Street, then west to Lowe Street, north on Lowe Street to 28th, 28th Street west to the alley between Lowe Street and Union Street and back to the same position where we had seen them previously.

Q. What, if anything, happened there?

A. Mr. Henry got out of the automobile and again walked around the front of the automobile into this gangway. Several minutes later he returned carrying several cartons.

Q. What, if anything, did you do at that time?

A. I took photographs.

Q. I show you Government's Exhibit No. 4 for identification, and I ask you if that truly and accurately portrays what you have described?

A. Yes.

Q. And what you photographed?

A. Yes.

Q. What, if anything, happened after that?

A. They proceeded north to 26th Street. We got back into the Bureau automobile and went east to
86 Lowe Street and north on Lowe Street, and we saw them coming south on Lowe Street, and we met them toward the end of the street, which would be approximately the 2700 block.

Q. And your car and their automobile came to a stop at that time?

A. Yes.

Q. Did you have a conversation with Pierotti or Henry at that time?

A. Yes.

Q. Was there anybody else present?

A. Yes.

Q. Who else was present?

A. Agent Stadtmiller.

Q. What, if anything, was said at that time and place?

A. I was driving. I got out of the driver's side. Mr. Henry got out of the passenger's side immediately, and Mr. Pierotti got out of the driver's side.

Q. When Mr. Henry got out of the passenger's side, did he close the automobile door after him, or did he leave it open?

A. No, it was wide open.

87 Q. What, if anything, happened then?

A. I heard him say to Mr. Pierotti, "Tell them you just picked me up."

Q. What, if anything, further was said by anybody?

A. We exchanged the usual greetings.

Q. You were acquainted, were you not?

A. Yes.

Q. Proceed.

A. I walked over to the automobile, and I could see three Admiral cartons. One of the cartons had the flaps

open. I could see a shipping label there indicating it was going to Cincinnati, Ohio.

Q. Did you at that time do something with respect to those cartons?

A. Yes.

Q. What did you do?

A. Photographed them.

Mr. Piragine: What was that?

By the Witness:

A. Photographed them.

By Mr. Waters:

Q. I show you Government's Exhibit No. 5 for 88 identification, and I ask you if that truly and accurately reflects the interior of the automobile in which Pierotti and Henry were riding and which you photographed on May the 13th?

A. Yes.

Q. What, if anything, happened after that?

A. We entered into a conversation. I asked them how about these cartons.

Q. By them, who do you mean?

A. Mr. Henry and Mr. Pierotti.

Q. Will you relate, please, what you said and what they said, if anything?

Mr. Piragine: Your Honor, could we possibly have the time and place?

Mr. Waters: May the 13th, and will you fix the time?

Mr. Piragine: I don't mean the date. I mean the hour of the day.

By Mr. Waters:

Q. Will you fix the hour, Mr. Oitszinger?

A. At this point it was approximately 2:35 p.m.

Q. Will you tell us, please, what was said then?

A. We asked them, "How about these cartons; whose cartons are they?" They said they didn't know.

Q. By "they," you have to tell us who talked.

89 A. Mr. Henry and Mr. Pierotti. I asked them, "Whose automobile is this?"

Mr. Henry says, "I don't know; it is not mine."

Mr. Pierotti said, "It belongs to another fellow."

I said, "Who is the other fellow?"

He said, "A fellow by the name of Babe," and I said, "What is his last name?"

He said he didn't know.

Q. This is Mr. Pierotti talking?

A. That is right.

I said, "Where does this fellow live?"

He said he doesn't know.

I said, "Where did you meet him?"

He said, "Phil's Tavern at 26th and Halsted." He said the keys were in the ignition and that he had used the car on other occasions.

He gave us a description of this other fellow Babe.

Q. Pierotti gave the description?

A. Yes. He said he was of either Irish extraction or Polish extraction.

Q. What, if anything, further did he say at that

90 time?

A. I asked him whether he had been in the alley, indicating the alley back in the 2600 block between Lowe and Union, and he said no.

Mr. Piragine: Excuse me. You are referring to which defendant now?

The Witness: Mr. Pierotti.

Mr. Piragine: Thank you.

By the Witness:

A. (Continuing) And he said he had just got off work, and I asked Mr. Henry if he was in that alley.

By Mr. Waters:

Q. Pardon me. Did Mr. Pierotti say what time he quit work on that date?

A. No; he said he just got off work.

Q. What, if anything, further was said?

A. Then I asked Mr. Henry if he was back in that alley, and he said no, indicating to Pierotti, "He just picked me up."

Q. What, if anything, further was said?

A. I asked Mr. Pierotti if he had just been over to the Red Top Lounge, and he said no, and I asked Mr. Henry if he had just been over to the Red Top
91 Lounge, and he said no. However, that he might have been there in the morning.

Q. Was there anything further said?

A. In asking them whose cartons they were, Mr. Pierotti said he did know they were in the car when he got in the car. Likewise, Mr. Henry said they were in the car when he got in the car.

Mr. Waters: Thank you; nothing further.

Cross Examination by Mr. Calihan.

Q. Mr. Oitszinger, that morning of May the 13th you have stated that you were in that area investigating a loss of the Hayes Freight Lines, a load of whiskey, is that correct?

A. Yes.

Q. Do you know how many other Bureau cars were in that area that morning?

Mr. Waters: I object, your Honor. It is immaterial to this inquiry.

The Court: He may answer.

By the Witness:

A. I don't believe there were any in the immediate area.

92 By Mr. Calihan:

Q. How many cars were assigned to the search for leads on the Hayes whiskey loss?

A. I would be guessing at the number. I would say maybe four or five autos.

Q. Four or five cars with two agents in each car?

A. One or two.

Q. How far away were you from the 1953 Ford when you first saw it in the alley?

A. I was at the mouth of the alley, approximately three hundred feet away.

Q. What were the size of the cartons they were carrying?

A. It was hard to tell what the size of the cartons were from that distance.

Q. Well, could you say anything about those cartons?

Mr. Waters: I object, your Honor. He has answered he was unable to tell about the size or the character of the cartons.

The Court: He may answer if he knows.

93 By the Witness:

A. All that I can say is that they were cartons.

By Mr. Calihan:

Q. Were they the size carton as identified here previously as Government's Exhibits 1, 2 and 3?

A. That is difficult to state, especially if he is carrying several cartons.

Q. Well, you couldn't see any lettering or anything like that on the cartons, could you?

A. No.

Q. You don't know whether they were groceries or not, do you, in a box?

A. No.

Q. There isn't anything suspicious about a person carrying a carton, is there?

A. Under what circumstances?

Q. Under any circumstances.

A. Some circumstances.

Q. To carry a carton?

A. It all depends upon who is carrying the carton and under what circumstances.

Mr. Waters: Your Honor, I will ask leave to explore this avenue on redirect if counsel pursues it further.

94 The Court: Beg your pardon?

Mr. Waters: I will ask leave to explore this avenue on redirect if counsel pursues it further.

By Mr. Calihan:

Q. I am asking about carrying cartons. You don't know anything about those cartons?

A. I don't know what the contents were.

The Court: You don't know the contents?

The Witness: No.

The Court: All right.

By Mr. Calihan:

Q. You stated that they drove off and you lost them for the time being, and the next time you saw them the car was parked in front of the Red Top Lounge?

A. That is right.

Q. Did you get out and examine the car at that time?

A. No.

Q. You just drove by?

A. No; we didn't drive by.

Q. You parked some distance away?

A. In the rear.

95 Q. When they came out, you saw Steve Bedalow, or what did you call him—

A. That is his name.

Q. Do you know whether he was stopped that morning?

A. Not in the morning; I don't know about the morning.

Q. Well, was he stopped that afternoon?

Mr. Waters: I object, your Honor.

The Court: Sustained.

126

UNITED STATES DISTRICT COURT
for the
Northern District of Illinois—Eastern Division

United States of America
v.
Albert Rudolph Pierotti
No. 57 CR 355

In this 24th day of January, 1958 came the attorney for the government and the defendant appeared in person and[1] by his counsel and the trial of the cause proceeds and the Court now having heard all the evidence adduced for the parties and arguments of counsel and being fully advised finds the defendant guilty as charged in the Indictment and

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a finding of guilty of the offense of Section 659, Title 18, United States Code (Theft from interstate shipment) as charged[3] and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] One (1) Year and One (1) Day

It Is Further Ordered that execution of sentence be and the same is hereby stayed until January 27, 1958 and that bond of the defendant heretofore filed herein shall remain in full force and effect.

It Is Further Ordered that appeal bond be and the same is hereby fixed at the sum of Two Thousand Five Hundred ($2,500.00) Dollars.

By Mr. Calihan:

Q. Do you know whether he was stopped or not of your own knowledge.

A. Yes.

Q. Will you answer the question?

A. After talking to Mr. Pierotti and Mr. Henry, another Bureau car accompanied us on the scene, and we turned Mr. Pierotti and Mr. Henry over to the occupant of that car, and about that time, Mr. Bedalow was driving along in what I think was about a 1946 Ford sedan. I stopped Mr. Bedalow. I know Mr. Bedalow. He knows me.

Q. Did you see him handle any of these cartons?

A. No.

96 Q. You just stopped him?

A. Yes.

Q. Because he was seen talking to these two in front of the Red Top Lounge?

A. Yes.

Q. What time was it, incidentally—and I don't believe I covered this—that you first saw the 1953 car in the alley?

A. Approximately 2:10 p.m.

Q. 2:10?

A. Yes.

Q. The next thing that occurred, you stated that the 1953 Ford went back to the same point in the same alley?

A. That is right.

Q. This is where you took the picture?

A. That is right.

Q. And were you the same distance away at that time?

A. Yes.

Q. About 300 feet?

A. Yes.

It Is Adjudged that[5]

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Philip L. Sullivan,
United States District Judge.

The Court recommends commitment to:[6]

....,
Clerk.

January 24, 1958.

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court wishing to recommend a particular institution.

Q. Or is it 300 yards?

A. 300 feet.

97 Q. Did you again notice Mr. Henry with cartons?

A. Yes.

Q. Would your answers be the same with reference to those cartons as they were on my previous question?

A. Yes.

Q. You couldn't identify them in any way, shape or form?

A. No.

Q. And then after that is when you made the stop on the street, a head-on stop? You were driving in the opposite direction, and you drove directly in front of them and stopped, is that correct?

A. Yes.

Q. You got out of one side and Stadtmiller got out of the other, and Henry and Pierotti got out of their vehicle?

A. Yes.

Q. Did you subsequently obtain a search warrant for the premises in that alley, the premises immediately adjacent to the gangway which you saw Mr. Henry enter?

A. No.

98 Mr. Waters: Objection, your Honor. It is immaterial.

The Court: The answer may stand. Go ahead.

By Mr. Calihan:

Q. Did anyone else?

A. Not to my knowledge.

Q. Were the premises searched?

A. Not to my knowledge.

Q. Did you go to the police department and ask them to make a search of those premises?

A. No.

Q. Did anyone else, of your knowledge, with the Bureau?

127

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 355) • •

NOTICE OF APPEAL
(Filed Jan 31 1958)

Names and addresses of appellants:

John Patrick Henry
2604 South Wallace
Chicago, Illinois

Albert Rudolph Pierotti
8628 South Emerald
Chicago, Illinois

Names and addresses of appellants' attorneys:

Edward J. Calihan, Jr.
Attorney for John Patrick Henry
2211 Bankers Building
105 West Adams Street
Chicago 3, Illinois

James P. Piragine
Attorney for Albert Rudolph Pierotti
Suite 1045
209 South La Salle Street
Chicago 4, Illinois

Offense: Violation of Section 659, Title 18, United States Code. Possession of goods stolen from an interstate shipment.

Concise statement of judgment or order, giving date, and any sentence:

On January 24, 1958 the Court found both defendants guilty, as charged in the indictment, and sentenced them to one year and one day.

128 Name of institution where now confined, if not on bail:

Each defendant is enlarged on $2,500.00 appeal

A. Not to my knowledge.

Q. Do you know who lived on those premises?

A. Yes, I believe I did.

Q. What was his name?

A. A Mr. and Mrs. Francis Burke.

Q. You don't know whether or not that was ever searched, whether those premises were ever searched?

A. Not to my knowledge.

Q. You say you stopped the car then at 2:30 in the afternoon, 2:35, and you had a conversation with Henry and Pierotti on the street?

99 A. Yes.

Q. Where did you go after you stopped them on the street?

A. After our conversation we arranged for their automobile to be pulled over to the curb, and I left them with another agent, as I previously explained, of the FBI, and I joined Mr. Stadtmiller at 2625 South Union where the Burkes live.

Q. What did you do there?

A. Mr. Stadtmiller was in a conversation with Mrs. Burke.

Q. Did she permit the search of the premises?

A. No.

Q. What did you do after you left the Burkes, if anything?

A. We returned to the Bureau car and picked up Mr. Pierotti and Mr. Henry and proceeded to our office.

Q. By the office, you mean the FBI headquarters over here?

A. 212 West Monroe.

Q. Did you make an investigation as to the contents of those cartons which you say you removed from the automobile?

100 A. I didn't.

bond, set by the United States District Court for the Northern District of Illinois, Eastern Division.

We, the above-named appellants, hereby severally appeal to the United States Court of Appeal for the Seventh Circuit from the foregoing judgment.

John and Patrick Henry and
A. R. Pierotti
/s/ Edward J. Calihan Jr.

129

United States of America } ss.
Northern District of Illinois }

• • (Caption—No. 57 CR 355) • •

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on January 31, 1958 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, and Criminal Procedure a copy of the foregoing Notice of Appeal was mailed to:

Honorable R. Tieken, United States Attorney
450 United States Court House
Chicago 4, Illinois

Honorable Kenneth J. Carrick, Clerk
United States Court of Appeals, Seventh Circuit
1212 Lake Shore Drive
Chicago 10, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 31st day of January, 1958.

Roy H. Johnson
Clerk

By /s/ Gizella Butcher
Deputy Clerk

(Seal)

Q. Did you cause one to be made?

A. Mr. Stadtmiller did.

Q. In the interests of expediency, is it not a fact that your first thought was that these may have been taken from the Indianapolis Forwarding Company; and I believe Mr. Stadtmiller so testified?

A. I knew they were from an interstate shipment. I didn't know who the common carrier was.

Q. How long was it after you took these people down there, the defendants down there, that you determined that there had been a loss?

A. I would be guessing at the time because Mr. Stadtmiller handled that phase of it.

Q. Your best guess, sir, four or five hours?

A. I would say approximately 4:30.

Q. 4:30 that afternoon?

A. Yes.

Q. You had determined there had been a loss?

A. Yes.

Q. And it was at that time that you placed them under arrest?

A. Formally, yes.

101 Q. And informally you placed them under arrest when you stopped the vehicle, did you not?

Mr. Waters: I object to this, your Honor.

The Court: Sustained.

By Mr. Calihan:

Q. As far as you know, you had no warrant for the arrest of either Mr. Henry or Pierotti, did you?

A. No.

Q. So far as you know, they were in violation of no law at the time you observed them?

Mr. Waters: I object to that, your Honor.

The Court: Sustained. Anything further?

Mr. Calihan: I am finished.

139 United States of America)
Northern District of Illinois) ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the cause entitled: United States of America, Plaintiff vs. John Patrick Henry and Albert Rudolph Pierotti, Defendant, No. 57 CR 355, as follows:

Indictment filed May 21, 1957

Order entered June 13, 1957 arraignment and plea

Petitioner, Albert R. Pierotti's motion to suppress evidence filed June 28, 1957

Petitioner, John Patrick Henry's motion to suppress evidence filed September 10, 1957

Government's Answer to defendant's motion to suppress evidence filed September 9, 1957

Clerk's file copy of transcript of proceedings had before the Honorable Philip L. Sullivan, Judge, on October 22, 1957 filed by the official court reporter on March 19, 1958

Petitioner Albert R. Pierotti's amendment to motion suppress evidence filed November 25, 1957

Clerk's file copy of transcript of proceedings had before the Honorable Philip L. Sullivan, Judge on November 25, 1957, filed by the official court reporter on March 19, 1958

Clerk's file copy of transcript of proceedings had before the Honorable Philip L. Sullivan, Judge on January 22, 1958, filed by the official court reporter on March 19, 1958

140 Judgement and Commitment entered January 24, 1958 re each defendant

Cross Examination by Mr. Piragine.

Q. Mr. Oitszinger, I didn't quite get the location where you said you were at this particular alley. To just clarify it for myself, I didn't. I know you stated it, but I didn't hear it.

102 A. He can read that back, can't he?

Q. That would be quite some distance when you said you observed this Ford.

A. In the alley?

Q. Yes.

A. Yes.

Q. Where was that?

A. That was an alley between Lowe Street and Union Street from 26th to 28th.

Q. Between 26th—

A. And 28th. 27th Street doesn't cut through there.

Q. That, then, is an alley of approximately two city blocks what you are referring to, is that correct, 26th to 28th?

A. Very short city blocks.

Q. It is still a city block, is it not?

A. Yes.

Q. And you were facing what direction, sir, when you observed this 1935 Ford?

A. North.

Q. You were facing north.

A. Yes.

Q. And I understand that this vehicle was about

103 300 miles—I am sorry—300 feet from your point of observation, is that correct?

A. Yes.

Q. And at that time, Mr. Oitszinger, you didn't recognize who was driving that particular 1953 Ford, did you?

A. I saw Mr. Pierotti driving the automobile when it entered the alley.

Defendants-Appellants' Notice of Appeal filed January 31, 1958

Clerk's certificate of mailing attached thereto

Stipulation filed March 7, 1958

Order entered March 7, 1958 extending the time in which to file and docket record on appeal to April 22, 1958

Statement pursuant to Rule 12(d) filed February 5, 1958

Stipulation pursuant to Rule 12(e) of the Rules of the United States Court of Appeals, for the Seventh Circuit, filed April 10, 1958

Stipulation with copy of John Patrick Henry's amend ment to motion to suppress evidence filed April 18, 1958

Order entered April 18, 1958, granting leave to restore lost original of Henry's Amendment to motion to suppress evidence by filing a copy thereof

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 18th day of April, 1958.

Roy H. Johnson
Clerk

By /s/ Gizella Butcher
Deputy Clerk

(Seal)

Q. Just a minute—

The Court: At that time.

The Witness: No.

By Mr. Piragine:

Q. At that time you didn't know who was in the car, is that right, if there was anybody?

A. I know who was in the car.

Q. Can you truthfully say, sitting on the witness stand, that from 300 feet at your point of observation you can tell the Court who was in that car, if there was anybody?

A. I can say this—

Q. I mean at that time, Mr. Witness.

Mr. Waters: Let him answer.

The Court: You can answer it. At that time did you know?

104 The Witness: No.

The Court: All right.

By Mr. Piragine:

Q. Where was this Red Top Lounge or tavern located?

A. I believe it is at 2903 South Wallace.

Q. 2903?

A. Yes.

Q. Did you go into this tavern after you had observed both the defendants Pierotti and Henry?

A. No.

Q. You did not?

A. I did not.

Q. Do you know of your own knowledge whether or not any other agents from your Bureau entered the Red Top Lounge?

A. I believe some of the agents from our office did.

Q. That is referring to May the 13th, 1957?

A. Yes.

Q. Who were they?

The Court: If you know of your own knowledge.

The Witness: Agent Huber might have gone in
105 there.

By Mr. Piragine:

Q. Who else?

A. I don't know.

Q. You know that other agents of your own knowledge did go in the tavern?

A. Yes.

Q. Do you know of your own knowledge whether or not they executed a search of the Red Top Lounge Tavern?

Mr. Waters: I object, your Honor. This is pretty far beyond the scope of the direct examination.

The Court: Sustained.

By Mr. Piragine:

Q. Did you observe the condition of Bedalow on that date, as to sobriety, on which you testified on direct examination?

A. Yes.

Q. What was it?

A. I considered him as being sober.

Q. Did you see this individual who was referred to, as you have testified, by defendant Pierotti as Babe on May 13th, the owner of the automobile?

106 A. I might have seen him later in our office. I am not sure.

Q. Did you investigate the fact whether or not this car was owned by Babe as the defendant Pierotti had indicated to you?

A. I didn't.

Q. You did not?

A. No.

Q. You did search the car when you stopped both defendants, that is, the 1953 Ford, did you not, Mr. Oitszinger?

A. I didn't.
Q. You did not?
A. No, I didn't.
Q. Didn't—
Mr. Waters: I object, your Honor. He has answered the question he did not search the car.
The Court: Yes, sustained.
Mr. Piragine: Maybe his interpretation of search—
The Court: You may ask him another question.
Mr. Piragine: That is what I intend to do.
107 By Mr. Piragine:
Q. Did you handle these cartons which you have identified?
A. I believe Agent Stadtmiller did.
Q. You were there?
A. Yes.
Q. You didn't touch them?
A. I didn't.
Q. Did you see Agent Stadtmiller take them out of the 1953 Ford?
Q. If you know, did Agent Stadtmiller place either of the defendants under arrest prior to that, prior to his taking the three cartons out of the 1953 Ford?
Mr. Waters: I object, your Honor, He has answered these defendants were placed under arrest at about 5:00 o'clock that evening.
The Court: He may answer.
By Mr. Piragine:
Q. Would you answer that, Mr. Witness?
A. They were formally placed—
108 Q. No; please. My question was at the time immediately prior to—you just testified Agent Stadtmiller took these three cartons out of the 1953 Ford, is that correct?
The Court: He has gone over that.

Mr. Piragine: I am just going to refresh him, Judge, as to what I am asking.

By Mr. Piragine:

Q. My question is this: Immediately prior to Agent Stadtmiller taking the three cartons out of the car, did he place the defendant Pierotti or the defendant Henry under arrest, if you know?

Mr. Waters: I object, your Honor.

The Court: He may answer that, if he knows. What is the answer?

The Witness: I am thinking. I know this much; I told them that "there is something wrong here, this isn't right." I said, "Let's go down to our office."

By Mr. Piragine:

Q. I didn't ask you that, sir.

The Court: Did you place them under arrest?

109 The Witness: No.

The Court: Did you see anyone else do it?

The Witness: No.

The Court: All right.

Mr. Piragine: That answers it.

The Court: Is that all?

Mr. Piragine: That is all, if the Court please.

Mr. Waters: A couple of questions, your Honor.

The Court: Make it very brief, because I have taken longer now than I thought. I was under the impression it was only going to take a few minutes.

Redirect Examination by Mr. Waters.

Q. I show you Government's Exhibits 1, 2 and 3 for identification, and ask you if these are the cartons removed from the automobile on May the 13th, 1957?

A. Yes.

Q. Are they in the same condition now as they

110 were when they were removed from the automobile?

A. Yes.

Q. Including Government's Exhibit No. 2 for identification, being opened?

A. Yes.

Q. They have been in the Bureau's care, custody and control ever since?

A. Yes.

The Court: Is that all?

Mr. Waters: I offer in evidence, your Honor, at this time Government's Exhibits 1, 2, 3, 4 and 5 for identification.

The Court: Any further examination? Any objection?

Mr. Piragine: I would like to ask one question.

The Court: All right.

Recross Examination by Mr. Piragine.

Q. Is it a fact that you opened this flap on one—which is this now?

111 Mr. Waters: Government's Exhibit 2, I believe.

By Mr. Piragine:

Q. This Exhibit No. 2, that you ripped open this flap?

A. No.

The Court: Is that all?

Mr. Piragine: That is all.

The Court: Is there any objection to the introduction of the exhibit? They may be received.

(Said Government's Exhibits 1, 2, 3, 4 and 5 were thereupon received in evidence.)

(Witness excused.)

The Court: Is that all?

Mr. Calihan: We stipulated, your Honor, they were interstate.

Mr. Waters: The Government has no further witnesses.

The Court: You mean you rest?

Mr. Waters: I will rest, your Honor.

I will read into the record, if it please the Court, the stipulation entered into, together with the pleadings of
112 the case heretofore filed by the defendants.

The Court: How many witnesses do you have for the defense?

Mr. Piragine: Your Honor, we rest at this time.

The Court: You rest?

Mr. Piragine: Yes.

Mr. Calihan: Yes.

The Court: Come in tomorrow morning, and I will see if I can hear you about 10:30.

Mr. Waters: Do you want me to read the stipulation then, your Honor?

The Court: I have a grand jury coming now. It will go over anyway, whether stipulations are read in or not, until 10:30 tomorrow morning.

(Thereupon an adjournment was taken to Friday, January 24, 1958, at 10:30 o'clock a. m.)

113

* * (Caption—57 CR 355) * *

Chicago, Illinois,
Friday, January 24, 1958,
10:30 o'clock a. m.

Court resumed pursuant to adjournment.

Present:

Mr. Waters
Mr. Calihan
Mr. Piragine

And thereupon the following further proceedings were had herein:—

The Clerk: The case on trial.

The Court: We will recess for a few moments.

(Thereupon a short recess was taken.)

The Court: You may proceed.

Mr. Piragine: If the Court please, Mr. Waters informed me that the Government has rested, is that correct?

114 Mr. Waters: Yes.

The Court: Both sides rested.

Mr. Piragine: If it please your Honor, Mr. Waters, on behalf of the defendant Pierotti I am making a motion for judgment of acquittal on the basis that the record, as it now stands, is lacking one iota of evidence that the Government has proven beyond a reasonable doubt the essential element which is the crux of the crime as alleged in the one count of this indictment, and mainly the element of knowledge.

115 (Thereupon Mr. Piragine addressed the Court in argument on behalf of Defendant Pierotti, reported but not transcribed at this time.)

116 (Thereupon Mr. Calihan addressed the Court in argument on behalf of Defendant Henry, reported but not transcribed at this time.)

117 Mr. Calihan: (Continuing) And I respectfully move the Court enter a motion for judgment of acquittal as to the defendant Henry.

118 (Thereupon Mr. Waters addressed the Court on behalf of the Government, reported but not transcribed at this time.)

125

UNITED STATES DISTRICT COURT
for the
Northern District of Illinois—Eastern Division

United States of America
v. No. 57 CR 355
John Patrick Henry

In this 24th day of January, 1958 came the attorney for the government and the defendant appeared in person and[1] by his counsel and the trial of the cause proceeds and the Court now having heard all the evidence adduced for the parties and arguments of counsel and being fully advised finds the defendant guilty as charged in the Indictment and

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a finding of guilty of the offense of Section 659, Title 18, United States Code (Theft from interstate shipment) as charged[3] and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] One (1) Year and One (1) Day

It Is Further Ordered that execution of sentence be and the same is hereby stayed until January 27, 1958 and that bond of the defendant heretofore filed herein shall remain in full force and effect.

It Is Further Ordered that appeal bond be and the same is hereby fixed at the sum of Two Thousand Five Hundred ($2,500.00) Dollars.

It Is Adjudged that[5]

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Philip L. Sullivan,
United States District Judge.

The Court recommends commitment to:[6]

....., Clerk.

January 24, 1958

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court wishing to recommend a particular institution.

[fol. 80]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 12306

September Term and Session, 1958

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

JOHN PATRICK HENRY and ALBERT RUDOLPH PIEROTTI, Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Before Duffy, Chief Judge, Hastings and Parkinson, Circuit Judges.

OPINION October 2, 1958

Hastings, Circuit Judge. Appellants, John Patrick Henry and Albert Rudolph Pierotti, were convicted under a one-count indictment charging them with the unlawful possession, in violation of Title 18 U.S.C.A. § 659, of three cartons of radios stolen from an interstate shipment. This appeal is based on alleged errors of the trial court in overruling the motions of both appellants to suppress evidence used in this cause and in its denial of appellant Henry's motion for a judgment of acquittal.

It is appellants' contention that the pre-trial hearing on their motions to suppress established that they were the victims of an unlawful arrest and search without warrant by agents of the Federal Bureau of Investigation and that, consequently, the evidence uncovered in the search, the three cartons of radios, should properly have been suppressed.

[fol. 81] George Stadtmiller, one of the two Federal agents who arrested appellants, was the only witness called by appellants in support of their motions to suppress and was, indeed, the sole witness in the pre-trial hearing on the motions. From his testimony are found the following facts: Agent Stadtmiller and Agent John J. Ortzinger who accompanied him were, on the day of the arrest, May 14, 1957, investigating leads to a reported theft of whiskey from the Hayes Freight Lines located in Chicago, Illinois, which had occurred the night before. Stadtmiller indicated that he was acquainted with both appellants, although he was not asked to explain in what connection he knew them) and also testified that he had received information concerning the "*implication*" of defendant Pierotti with interstate shipments," this information purportedly coming from a Mr. Lieberman, vice president of the Ziffrin Truck Lines and employer of Pierotti. There is no indication in the record in what manner Pierotti was so implicated.

Appellants were first observed by the agents, on the day of the arrest, emerging from the Red Top Lounge located at 2003 South Wallace Street, Chicago, Illinois, at about 2:10 p.m. They then walked to a 1953 two door black and white Ford parked across the street and, with Pierotti driving, were observed to travel by a rather indirect route to an alley between Union and Lowe streets. The agents, who had followed, parked their car, walked to the end of the alley and observed Henry leave the car occupied by appellants and enter a gangway. Henry returned in about two minutes carrying some cartons which he placed in the car. Appellants drove off and were lost to the view of the agents. The agents then returned to their car and drove through various streets looking for appellants' car which they finally located parked in its original position opposite the Red Top Lounge on Wallace Street. The agents parked nearby and shortly thereafter observed Henry and Pierotti leave the Lounge. After engaging in conversation with a man known to the agents as Steve Bedlow, appellants returned to their car and drove back to the same alley where Henry was again observed getting out of the car, entering the gangway and returning shortly carrying some more cartons which he again placed in the car. The agents saw

all this at a distance of some 300 feet and could not have [fol. 82] known at that time the contents of the cartons, their number or size. Appellants then drove away, followed by the agents, and a few minutes later at about 2:50 p.m. were intercepted by the agents who motioned them to stop as the two cars approached each other traveling along Wallace Street. Henry got out of the car leaving the car door open and approached the agents. He was overheard to say to Pierotti: "Hold it. It's the G's," and "Tell him he [you?] just picked me up." The three cartons bearing shipping labels which indicated they were part of an interstate shipment *were plainly visible to Agent Stadtmiller through the open door of the car.*

Stadtmiller testified further that:

> " . . . We asked them about the ownership of the car, and Mr. Pierotti said it wasn't his car, and he said it was Babe's car, and that he had borrowed it. And we asked him about the cartons that were in the car, and he said that they were in the car when he—
>
> "The Court: Just a minute. All right, go ahead.
>
> "By the Witness:
>
> "A. (Continuing) We asked him about the cartons that were in the car, and he said that they were in the car at the time he borrowed it from the owner.
>
> . . .
>
> "Q. What, if anything, else was said by you to the defendants and by the defendants to you at that time and place?
>
> "A. Well, after they said, after Mr. Pierotti said the cartons were in the car at the time he borrowed it, we asked them if they had just been at the Red Top Lounge, and Mr. Henry said that he may have been earlier that day as he was visiting numerous taverns. Mr. Pierotti said he had just got off work at 2:30.
>
> "Q. Do you know of your own knowledge, whether or not that was correct?
>
> "A. Well, I had seen him at 2:10 away from work."

Appellants were then taken into custody. It was ultimately determined, between 4:30 and 5:00 p.m. of that day, that the cartons in question had been stolen from a motor truck of the Ziffrin Truck Lines, and appellants were then *officially informed* that they were under arrest and of the charges against them.

[fol. 83] Appellants raise the contention that the stopping of their car and resulting discovery of the cartons of radios plainly visible through the open door of the car was an unlawful search. Under the Fourth Amendment to the Constitution a lawful search of a car moving on a public thoroughfare may be had without a warrant providing probable cause for the search exists. *Brinegar* v. *United States*, 338 U.S. 160 (1949); *Carroll* v. *United States*, 267 U.S. 132 (1925).

The Supreme Court of the United States in the *Carroll* case observed that:

> "On reason and authority the true rule is that 'if the search and seizure without a warrant are made upon probable cause, that is, upon a belief reasonably arising out of circumstances known to the seizing officer that an automobile or other vehicle contains that which by law is subject to seizure and destruction the search and seizure is valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when adopted, and in a manner which will conserve public interests as well as the rights of individual citizens.
>
> * * *
>
> "'The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books or papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ *toto coelo*. In one case the Government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods

is authorized by the common law . . . ." *Carroll* v. *United States*, *supra* at 149-150.

In the *Brinegar* case the Supreme Court stated that probable cause "has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense is being committed." *Brinegar* v. *United States*, *supra* at 175-176.

[fol. 84] This court has defined probable cause as "reasonable grounds of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged. . . . [A]nd what constitutes probable cause must be determined from the standpoint of the officer with his skill and knowledge, rather than from the standpoint of the average citizen under similar circumstances." *United States* v. *Sebo*, 7 Cir., 101 F. 2d 889, 890 (1939). The agent need not have legal evidence of a suspected illegal act. *Brinegar* v. *United States*, *supra* at 174-175; *Gilliam* v. *United States*, 6 Cir., 189 F. 2d 321, 323 (1951). It is only necessary that the facts and attendant circumstances are such as would lead a reasonably prudent man to believe that articles are illegally possessed in the automobile to be searched. *Husty* v. *United States*, 282 U.S. 694, 701 (1931).

We hold that there existed probable cause for the search in this case. The agents, while investigating for leads to a reported theft of whiskey which had occurred the previous night, observed appellants' unusual behavior set forth above. Both appellants were known to the agents, and appellant Pierotti known by them to be involved or implicated in interstate shipments in some manner. As in the *Brinegar* and *Carroll* cases, no problem of search of a home or other place of privacy is involved. These cases involve the freedom to use public thoroughfares in swiftly moving vehicles for dealing in contraband. Not every traveler may be stopped and searched at an officer's whim or mere sus-

picion, but it is clear that here the facts within the agents' knowledge amounted to more than mere suspicion and constituted probable cause for their action in stopping appellants' car.

The arrest and taking into custody of appellants followed the discovery of the cartons of radios bearing the shipping labels indicating that they were part of an interstate shipment and the far from satisfactory explanation by appellants in regard to the ownership of the cartons. Agents of the Federal Bureau of Investigation are empowered by statute to "make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have *reasonable grounds to be-* [fol. 85] *lieve that the person to be arrested has committed or is committing such felony.*" (Our emphasis.) 18 U.S.C.A. § 3052. The agents on finding the cartons of radios in the car had reasonable ground to believe that the felony of illegal possession of goods stolen from an interstate shipment was then being committed and the arrest was therefore valid. See *Bell* v. *United States*, D.C. Cir., 254 F. 2d 82 (1958); *Walker* v. *United States*, 7 Cir., 246 F. 2d 518 (1957); and *Gilliam* v. *United States*, 6 Cir., 189 F. 2d 321 (1951). The fact that there had been no reported theft of radios from an interstate shipment cannot be seriously considered as an indication that the agents acted without "reasonable grounds." An arresting officer deals in probabilities, not certainties and not necessarily eventual truth. *Brinegar* v. *United States*, *supra* at 176; *Bell* v. *United States*, *supra* at 86. The trial court properly denied appellants' motion to suppress.

Appellant Henry contends further that, as a matter of law, the evidence was not of sufficient weight to support a conviction as to him and that, therefore, the trial court erred in denying his motion for judgment of acquittal. In considering appellant's contention in this regard this court may not weigh the evidence nor determine the guilt or innocence of the accused and must view the record in the light most favorable to the government. *Glasser* v. *United States*, 315 U.S. 60, 80 (1942); *Green* v. *United States*,

7 Cir., 246 F. 2d 155, 157 (1957); *United States* v. *Iacullo*, 7 Cir., 226 F. 2d 788, 795 (1955). If, as appellant Henry contends, the government's case had been based solely on the fact of his presence in the car which contained the stolen goods and his association with the other defendant, the government would have failed to prove unlawful and knowing possession on his part: *United States* v. *O'Brien*, 7 Cir., 174 F. 2d 341, 344 (1949). However, in this case the record shows further that the car in which appellants were driving had been borrowed by Henry from one Wilbur Holtz who denied the presence of the cartons in his car at the time Henry took the vehicle. At the time they were stopped and questioned Pierotti untruthfully asserted that the car had been loaned to him. Agent Oitszinger testified of his observations of appellants' conduct set forth elsewhere in this opinion which shows clearly that Henry exer- [fol. 86] cised dominion over the cartons completely inconsistent with the attempted explanation at the time of his arrest that the cartons were in the car when he got into it and that he did not know whom they belonged to. This court held in *Wilkerson* v. *United States*, 7 Cir., 41 F. 2d 654, 657 (1930) that:

> "Possession of the fruits of crime recently after its commission justifies the inference that the possession is guilty possession, and, though only *prima facie* evidence of guilt, may be of controlling weight unless explained by the circumstances or accounted for in some way consistent with innocence."

We hold that the evidence supports the conviction of Henry and that the trial court did not err in denying his motion for judgment of acquittal.

The judgment of the district court is

Affirmed.

PARKINSON, Circuit Judge, dissenting.

In order to sustain the judgment of conviction in this case the Government is obliged to justify the search as being incident to a lawful arrest. This it cannot do and I am, therefore, compelled to dissent.

On the day of the arrest federal agents were investigating leads to a whiskey loss from the Hayes Freight Lines which had occurred the night before. Agents Stadtmiller and Oitszinger were in a car so engaged. The defendants "were driving south in the 2600 block on Wallace, and we (the agents) were headed north, and we (the agents) intercepted their path." The agents "drove directly in front of" the car in which the defendants were riding and made "a head-on stop".

Counsel for the Government stated in oral argument before this court that when the federal agents stopped the defendants' car the arrest of the defendants occurred right then and there. Thus it is clear that unless the agents had probable cause to *then* believe that the defendants had committed a felony cognizable under the laws of the United States that arrest was not a valid one and any search incident thereto was unlawful. The search at its commencement must be valid and cannot be saved by [fol. 87] what it turns up. "In law it is good or bad when it starts and does not change character from its success." *U.S. v. Di Re*, 1948, 332 U.S. 581, 595.

The parties are in agreement that probable cause means more than bare suspicion. The Government's contention that there was probable cause to arrest the defendants when the federal agents stopped defendants' car is based solely upon three factors: 1. the defendants were seen carrying cartons, the number, size and contents of which were completely unknown to the agents, which the defendants placed in the back of their automobile; 2. the agents were "acquainted" with the defendants; and 3. a Mr. Lieberman, vice-president of Ziffrin Truck Lines, for which the defendant Pierotti worked, had told Agent Stadtmiller that Pierotti had been "implicated" with interstate shipments.

Again in oral argument before this court the Government admitted that it could not explain what had been meant by the words "acquainted" and "implicated". It has not been argued, nor from this record could it be so argued, that any connotation unfavorable to defendants must or should be placed upon these words. They stand alone unexplained and undefined and as such they are meaningless. They cannot be twisted and contorted into personal knowledge by the agents that the defendants were criminals or were known to be involved in federal law violations as were the defendants in the *Carroll* and *Brinegar* cases.

Not only were the agents unable to tell anything about the cartons prior to the arrest but on subsequent examination it was shown that whereas the agents were looking for and expected to find stolen whiskey, the cartons contained no such thing. Moreover, after the agents had opened the cartons and examined the contents they were unable to say what crime, if in fact any at all, had been committed.

In the *Walker* case the evidence clearly showed that the arresting federal agents had personal knowledge given to them by an informer which furnished probable cause to believe a federal felony was being committed. Thus this court held the arrest was valid and the search incidental thereto lawful. Likewise in the *Gilliam* case the federal
[fol. 88] agents had personal knowledge that the defendant was a bootlegger and they had been furnished with information by an officer that clearly constituted probable cause. It is that sort of direct evidence of personal knowledge that is completely lacking in the case at bar.

The *Bell* case has no application here. There the arresting officers were policemen of the District of Columbia. They stopped the defendant's car after he had pulled away from the curb and had driven some two blocks without lights at 3:30 o'clock in the morning. The officers could have properly arrested the defendant for driving without lights.

Apart from the fact that the record in the *Carroll*, *Husty* and *Brinegar* cases clearly disclosed evidence of personal

knowledge of the arresting federal agents that each defendant was a bootlegger and engaged in illegal trafficking of liquor in violation of The National Prohibition Act and thereby had probable cause sufficient to search their respective automobiles. Mr. Justice Jackson speaking for the court in *U. S. v. Di Re*, 1948, 332 U.S. 581, points up the clear distinction between such cases and the one here when he speaks on page 584 as follows:

> "The belief that an automobile is more vulnerable to search without warrant than is other property has its source in the decision of *Carroll v. United States*, 267 U.S. 132. That search was made and its validity was upheld under the search and seizure provisions enacted for enforcement of the National Prohibition Act and of that Act alone."

Again we say there is no evidence of personal knowledge by the federal agents here that the defendants or either of them could have been suspected of interstate shipment thefts at the time the path of their car was intercepted by the agents and they were arrested and taken into custody. It was at that time probable cause had to exist for when their car was stopped by the agents intercepting its path and driving directly in front of them and making a head-on stop I think the arresting officers were then in the position of an officer who has entered a home; *i.e.*, the search at that time had to be valid and could not be saved by what it later uncovered.

[fol. 89] In my opinion the search of defendants' automobile was in clear violation of the Fourth Amendment. I would, therefore, reverse and remand with instructions to sustain the motions to suppress.

[fol. 90]

In United States Court of Appeals

For the Seventh Circuit

Chicago 10, Illinois

No. 12306

United States of America, Plaintiff-Appellee,

vs.

John Patrick Henry & Albert Rudolph Pierotti,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

Judgment—October 2, 1958

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed.

[fol. 91]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—November 4, 1958

It is ordered by this Court that the petition for rehearing filed in the above cause be, and the same is hereby, Denied.

[fol. 92] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 93]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—February 24, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

after his arrest, and his fleeting twenty minute association with the other defendant, should it not be determined, as a matter of law, that there was insufficient evidence to authorize a conviction in a case where the defendant offered no evidence, but relied upon a motion for judgment of acquittal at the close of the government's case?

7. Where the facts in evidence explain the proximity of stolen goods found in an automobile in which the petitioner is a passenger, does the presumption or inference, that the unexplained "possession" of recently stolen property will authorize conviction, apply?

STATEMENT OF THE CASE.

A one-count indictment, 57 CR 355, was returned against the defendants, JOHN PATRICK HENRY and ALBERT RUDOLPH PEROTTI, on May 21, 1957, charging them with the unlawful possession of three (3) cartons of radios of a value in excess of $100.00, which had theretofore been stolen from an interstate shipment, in violation of Section 659, Title 18, United States Code. The defendants each moved to suppress the evidence in this cause and after hearing by the Court, said motions were respectively denied on October 22, 1957. Subsequently, the motions to suppress were amended, and were again denied on November 25, 1957.

Defendants waived a jury and trial commenced on January 23, 1958; it was concluded on the same day. Both defendants moved for acquittal at the close of the government's evidence, and offered no evidence in their own behalf.

The defendants were convicted in the Court below, and were each sentenced to terms of one year and one day in the custody of the Attorney General.